

CIVIL DISTRICT COURT  
PARISH OF ORLEANS  
STATE OF LOUISIANA

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GLORIA SCOTT AND \*  
DEANIA JACKSON, \*  
\* NO. 96-8461  
VERSUS \* DIVISION "I"  
\* SECTION 14  
\*  
THE AMERICAN TOBACCO \*  
COMPANY, INC., ET AL. \*

Transcript of proceedings before the  
Honorable Richard J. Ganucheau, Judge Pro Tempore,  
Civil District Court, Parish of Orleans, State of  
Louisiana, 421 Loyola Avenue, New Orleans, Louisiana  
70112, commencing on June 18, 2001.

\* \* \* \* \*  
Thursday Morning Session  
May 8, 2003  
9:40 a.m.  
\* \* \* \* \*

## I N D E X

Witness Page  
DAVID E. TOWNSEND, Ph.D.  
Cross-continued (By Mr. Bencomo) 20297

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Thursday Morning Session

May 8, 2003

9:40 a.m.

\* \* \* \* \*

P R O C E E D I N G S

\* \* \* \* \*

(In open court with a jury present:)

THE COURT:

Good morning.

Mr. Bencomo, are you ready to  
continue with your cross-examination?

MR. BENCOMO:

Yes, Your Honor. Good morning,  
ladies and gentlemen of the jury. Good  
morning, Your Honor.

-- -- --

DAVID E. TOWNSEND, Ph.D.

being previously duly sworn by the Clerk, testifies  
and says further as follows:

-- -- --

CROSS-EXAMINATION (Continued)

BY MR. BENCOMO:

Q. Dr. Townsend?

A. Good morning.

Q. Dr. Townsend, you discussed in response to  
the last question your chart of the reduction in tar  
and nicotine yield. Do you remember that?

A. I do.

Q. And I have asked Regina to prepare a  
transparency of that chart, and I believe that that  
particular chart has then been reproduced as DT-2.

1 Jane, not DT-1, but DT-2 is the one  
2 with the reduced tar and nicotine yield.  
3 May we publish, Your Honor?

4 THE COURT:  
5 Objection?

6 MR. BELASIC:  
7 It looks like it. No objection, Your  
8 Honor.

9 THE COURT:  
10 You may publish.

11 MR. BENCOMO:  
12 Thank you.

13 BY MR. BENCOMO:

14 Q. Now, does that not represent the same chart  
15 that you prepared for the benefit of the jury?

16 A. It appears to be the same.

17 MR. BENCOMO:

18 Now, would you be kind enough, Jane,  
19 to superimpose DT-1, which is the CDC  
20 statistics showing the death rate due to  
21 cigarette smoking?

22 May we publish that, Your Honor?

23 MR. BELASIC:  
24 No objection, Your Honor.

25 THE COURT:  
26 You may publish.

27 BY MR. BENCOMO:

28 Q. Now, the line that is DT-1 that is going up  
29 towards the upper right-hand corner of that is the  
30 death rate as represented by the Centers for Disease  
31 Control. And I'm sure you are very familiar with  
32 that particular line, are you not, Dr. Townsend, yes

1 or no?

2 A. Yes, I am familiar with curves similar to  
3 this. I don't know exactly about this particular  
4 curve, but I've seen similar.

5 Q. Thank you.

6 MR. BENCOMO:

7 You can take that down now, I  
8 appreciate it, Jane.

9 BY MR. BENCOMO:

10 Q. Dr. Townsend, I asked you yesterday if you  
11 knew when this lawsuit was filed, and I even told  
12 you the year but you weren't willing to accept  
13 that.

14 After you left the courtroom yesterday, did  
15 anyone make you aware that this lawsuit was filed in  
16 1996?

17 A. No, I don't think so.

18 Q. All right. Did anyone make you aware after  
19 you left the courtroom yesterday afternoon that the  
20 members of the class -- that is, the smokers and  
21 former smokers of Louisiana -- are those individuals  
22 who started smoking before the year 1988?

23 MR. BELASIC:

24 Objection. Misstates the class  
25 definition.

26 THE COURT:  
27 Say that again.

28 MR. BELASIC:

29 It misstates the class definition.  
30 THE COURT:  
31 Well, it's incomplete. Sustained.  
32 BY MR. BENCOMO:

20300

1 Q. I'm sorry, before 1996. I will reframe the  
2 question, Your Honor.  
3 Did anyone make you aware that the members of  
4 the class are smokers and former smokers who started  
5 smoking before 1996?  
6 A. No, I don't think so.  
7 Q. When did you -- when did your web site first  
8 come on line?  
9 A. I don't recall the exact date. It's been up  
10 for years, though.  
11 Q. Well, when, do you remember the year?  
12 A. I don't remember the exact date. That's my  
13 answer.  
14 Q. Now, I would like to turn your attention for  
15 a moment to the area of ammonia which Mr. Belasic  
16 discussed with you.  
17 MR. BENCOMO:  
18 Carl, would you kind enough to pull  
19 up Exhibit 4241, and would you please put  
20 that on the witness' screen, that of the  
21 Court's and opposing counsel?

22 BY MR. BENCOMO:  
23 Q. Dr. Townsend, are you familiar with this  
24 document?  
25 A. I have seen this before, yes.  
26 Q. And that is an RJR document, is it not, sir?  
27 A. I believe it is.  
28 MR. BENCOMO:  
29 Your Honor, may we publish?  
30 MR. BELASIC:  
31 No objection, Your Honor.  
32 THE COURT:

20301

1 You may publish.  
2 MR. BENCOMO:  
3 Carl, would you please highlight  
4 what's typed on there and blow it up,  
5 please, also the very top? There you go,  
6 thank you very much.  
7 BY MR. BENCOMO:  
8 Q. Now, that is an RJR secret document, is that  
9 not correct, Dr. Townsend?  
10 A. It is stamped secret.  
11 Q. And it reads, and I quote:  
12 Implications and activities arising  
13 from correlation of smoke pH with nicotine  
14 impact, other smoke qualities and  
15 cigarette sales.  
16 Did I read that correctly, sir?  
17 A. You did.  
18 MR. BENCOMO:  
19 Carl, would you please go to the  
20 third physical page of that article?  
21 And may we publish?  
22 THE COURT:  
23 You may publish.  
24 MR. BENCOMO:  
25 Carl, would you please highlight the

26 sentence that begins, "Our data show," the  
27 bottom paragraph. Just the first  
28 sentence, please.  
29 Thank you.  
30 BY MR. BENCOMO:  
31 Q. That particular sentence reads, sir, and I  
32 quote:

20302

1 Our data show that smoke from our  
2 brands and all other significant  
3 competitive brands in recent years has  
4 been consistently and significantly lower  
5 in pH, open paren, less alkaline, closed  
6 paren, than smoke from Marlboro and to a  
7 lesser degree Kool.

8 Did I read that correctly, sir?

9 A. You did.

10 MR. BENCOMO:

11 And Carl, would you please go to the  
12 last sentence of that same paragraph and  
13 highlight it, and blow it up where it  
14 begins, "This has raised."

15 BY MR. BENCOMO:

16 Q. This has raised questions as to (1)  
17 the effect of higher smoke pH on nicotine  
18 impact and smoke quality, hence market  
19 performance, and (2) how the higher smoke  
20 pH might be accomplished.

21 Did I read that correctly, Dr. Townsend?

22 A. I think you did, yes.

23 Q. Thank you.

24 MR. BENCOMO:

25 Would you please go to the very next  
26 page, Carl?

27 And may we publish, Your Honor?

28 THE COURT:

29 You may publish.

30 MR. BENCOMO:

31 Thank you.

32 And would you please blow up the III

20303

1 and the first full paragraph under that?

2 BY MR. BENCOMO:

3 Q. And what is the title of that III,  
4 Dr. Townsend?

5 A. It says III, Smoke pH and Free Nicotine.

6 Q. And it reads, and I will quote:

7 In essence, a cigarette is a system  
8 for delivery of nicotine to the smoker in  
9 attractive, useful form.

10 As, quote, normal, end quote, smoke  
11 pH at or below about 6.0, essentially all  
12 of the smoke nicotine is chemically  
13 combined with acidic substances, hence is  
14 nonvolatile and relatively slowly absorbed  
15 by the smoker.

16 As the smoke pH increases above about  
17 6.0, an increasing proportion of the total  
18 smoke nicotine occurs in free form, which  
19 is volatile, rapidly absorbed by the  
20 smoker, and believed to be instantly  
21 perceived as nicotine, quote, kick, end  
22 quote.

23 Did I read that correctly, sir?  
24 A. No. I think you said "as" instead of "at" in  
25 the second sentence.  
26 Q. Did I otherwise read that correctly?  
27 A. I think you did.  
28 Q. Thank you.  
29 MR. BENCOMO:  
30 Would you please go to the third  
31 paragraph, Carl and would you highlight  
32 the first full sentence, and blow that  
20304  
1 up. Thank you.  
2 BY MR. BENCOMO:  
3 Q. And I quote:  
4 As a result of its higher smoke pH,  
5 the current Marlboro, despite a two-thirds  
6 reduction in smoke tar and nicotine over  
7 the years, calculates to have essentially  
8 the same amount of free nicotine in its  
9 smoke as did the early Winston.  
10 Did I read that correctly, sir?  
11 A. Yes.  
12 MR. BENCOMO:  
13 And Carl, the second to last  
14 sentence, which begins "Thus," if you  
15 would highlight that and blow that up?  
16 Thank you.  
17 Q. Thus -- and I quote -- currently the  
18 calculated amount of free nicotine in  
19 Marlboro smoke is almost three times the  
20 amount in Winston smoke.  
21 Did I read that correctly?  
22 A. Yes.  
23 MR. BENCOMO:  
24 Now, IV, Carl, if you would highlight  
25 the very first sentence and blow it up?  
26 BY MR. BENCOMO:  
27 Q. And it reads: Smoke pH and Other Smoke  
28 Qualities.  
29 And I will quote:  
30 In addition to enhancing nicotine  
31 kick, in quotes, increasing the pH, open  
32 paren, increasing alkalinity, closed  
20305  
1 paren, of smoke above about 6.0 causes  
2 other changes, particularly when the  
3 increase in smoke pH is achieved by adding  
4 ammonia to the blend.  
5 Did I read that correctly, sir?  
6 A. I believe so.  
7 MR. BENCOMO:  
8 Carl, would you please go to the very  
9 next page?  
10 May we publish, Your Honor?  
11 THE COURT:  
12 You may publish it.  
13 MR. BENCOMO:  
14 And would you please highlight the  
15 fifth or -- rather, that's it, the very  
16 top, and blow that up.  
17 BY MR. BENCOMO:  
18 Q. And it reads: Marketing Correlations and  
19 Implications. Is that not correct, sir?



20 A. Yes.  
21 MR. BENCOMO:  
22 Would you please go to the second  
23 paragraph, Carl, and highlight it, and  
24 blow that up. Thank you.  
25 BY MR. BENCOMO:  
26 Q. These differences in nicotine impact  
27 and other smoke qualities arising from  
28 smoke pH increases would be expected to  
29 give rise to differences in consumer  
30 response, hence market performance.  
31 Our preliminary correlations strongly  
32 suggest that this is the case, and that

20306

1 the vigorous, sustained growth in sales of  
2 Marlboro, open paren, and other  
3 Philip Morris brands, closed paren, and  
4 Kool correlates closely with the increased  
5 smoke pH, hence increased, quote, free,  
6 end quote, nicotine and nicotine impact of  
7 those brands.

8 Did I read that correctly, sir?

9 A. I think so, yes.

10 MR. BENCOMO:  
11 And the last paragraph of that  
12 section, Carl, would you highlight that  
13 and blow it up where it reads, "Subsequent  
14 detailed"?

15 BY MR. BENCOMO:

16 Q. Subsequent detailed analysis by  
17 marketing research of our pH and, quote,  
18 free, end quote, nicotine data along with  
19 sales data and other factors has confirmed  
20 the strongly positive correlation between  
21 free nicotine in smoke, open paren,  
22 determined by pH and total nicotine in  
23 smoke, closed paren, and market share  
24 performance.

25 Did I read that correctly, sir?

26 A. Yes.

27 MR. BENCOMO:  
28 Carl, would you please go to the very  
29 next page -- I'm sorry, the last page of  
30 that article.

31 And may we publish, Your Honor?

32 THE COURT:

20307

1 You may publish.

2 MR. BENCOMO:

3 Thank you, Your Honor.

4 The very last page, Carl, if you  
5 would?

6 May we publish that page, Your  
7 Honor?

8 THE COURT:

9 You may publish.

10 MR. BENCOMO:

11 Thank you. The one that has the  
12 signatures, the last page.

13 May we publish?

14 THE COURT:

15 You may publish it.

16 MR. BENCOMO:

17 Thank you. And would you please blow  
18 up, Carl, the signature and the copy  
19 line. Thank you.  
20 BY MR. BENCOMO:  
21 Q. And whose signature is that, Dr. Townsend?  
22 A. That's Dr. Claude Teague.  
23 Q. And you know Dr. Teague; is that not correct?  
24 A. Yes.  
25 Q. Dr. Teague was with Reynolds for how many  
26 years?  
27 A. Oh, gee, he started in about 1953 or  
28 thereabouts, and I think he retired in, oh, late  
29 '80s, early '90s.  
30 Q. He was a Ph.D. like yourself?  
31 A. A Ph.D. chemist.  
32 Q. And who is Dr. Murray Senkus?

20308

1 A. Dr. Senkus was the head of research at that  
2 time.  
3 Q. So in other words, he held basically the same  
4 type of position that you hold today?  
5 A. Similar, not exactly the same.  
6 Q. Is that because maybe your duties have  
7 expanded somewhat?  
8 A. No. Dr. Senkus was in charge of research,  
9 and at that time we had a separate head for research  
10 and a separate head for development.  
11 So all product development was done under the  
12 responsibility of someone different than Dr. Senkus.  
13 Q. Okay.

14 MR. BENCOMO:  
15 Carl, you can take that down.  
16 Now, Carl, would you please put up on  
17 the screen Exhibit 4470, for the witness,  
18 the Court and opposing counsel.

19 BY MR. BENCOMO:  
20 Q. Now, sir, do you recognize that as an RJR  
21 interoffice memo?

22 A. Yes.

23 MR. BENCOMO:  
24 May we publish, Your Honor?  
25 MR. BELASIC:  
26 May we approach, Your Honor?

27 THE COURT:

28 Yes.

29 (At sidebar:)

30 THE COURT:

31 May I have the document? Is there a  
32 copy of the document down there

20309

1 somewhere?

2 MS. DeSUE:

3 Yes, Your Honor.

4 You know, it was previously -- it's  
5 already admitted, but I can get one for  
6 you if you like?

7 THE COURT:

8 Mr. Belasic?

9 MR. BELASIC:

10 My objection is this is a document  
11 that talks about potential marketing  
12 plans.

13 Mr. Bencomo went to great pains

14 during the qualifications to point out  
15 that this man is not an expert on  
16 marketings. I also asked him if he had  
17 any personal knowledge about marketing.  
18 Marketing is not in his expert report.

19 So my objection is there is no  
20 foundation for the personal knowledge  
21 required under Article 602. It's  
22 certainly beyond his expertise.

23 If he can't establish that personal  
24 knowledge, then it can't be used. He may  
25 have seen the document in litigation, but  
26 he has to establish some personal  
27 knowledge; otherwise, they are trying to  
28 turn him into a marketing witness.

29 THE COURT:

30 Let's see what the question is going  
31 to be. I don't know what the question is  
32 going to be.

20310

1 MR. GAY:

2 I have a further objection, Your  
3 Honor.

4 It's apparent from the last  
5 examination of the last document that  
6 Mr. Bencomo is just going to read the  
7 document and never ask a question about  
8 it.

9 I don't think that's appropriate,  
10 Your Honor. I would object to that.

11 MR. BENCOMO:

12 May I respond as to Mr. Belasic's so  
13 we don't have to come up here.

14 THE COURT:

15 Yes.

16 MR. BENCOMO:

17 This document talks about tar,  
18 nicotine, it talks about flavor, all the  
19 things that are in his field of expertise.

20 THE COURT:

21 I did say that I'm going to wait for  
22 the question with regard to Mr. Belasic's  
23 objection.

24 But Mr. Gay has a point. You are  
25 just reading documents to this person.  
26 There was no question to this witness when  
27 you were reading the previous document  
28 other than: Did I read it correctly?

29 There has got to be a purpose for the  
30 document if you are using it with a  
31 witness. To read it and not ask him a  
32 question, you don't need a witness to do

20311

1 that. We did that without witnesses. And  
2 I think that's Mr. Gay's objection.

3 So let's proceed, and if I have  
4 objections, I will rule on them without a  
5 conference.

6 MR. BENCOMO:

7 Do you want me to just go lay the  
8 foundation then on all of this?

9 THE COURT:

10 I'm going to rule on the questions as

11 and when they are asked. There is nothing  
12 I can rule on at this point.  
13 (In open court:)  
14 BY MR. BENCOMO:  
15 Q. Dr. Townsend, as part of your work as  
16 executive vice president in charge of research and  
17 development, you work with tars, do you not, sir?  
18 A. Work with tars?  
19 Q. Well, as part of the studies that you do; is  
20 that not correct?  
21 A. We measure tar of products.  
22 Q. You measure tars.  
23 Also flavorants; is that not correct?  
24 A. In what respect?  
25 Q. Do you put flavorants into your product?  
26 A. We do. Additives, certain additives and  
27 ingredients.  
28 Q. So that's something that you are familiar  
29 with; is that correct?  
30 A. In certain ways.  
31 MR. BENCOMO:  
32 Your Honor, at this time I would ask  
20312  
1 to be permitted to publish this document?  
2 MR. BELASIC:  
3 Objection. No foundation.  
4 THE COURT:  
5 Overruled. You may publish it.  
6 MR. BENCOMO:  
7 Thank you, Your Honor.  
8 MR. BELASIC:  
9 Could Mr. Bencomo give the witness a  
10 hard copy, Your Honor?  
11 THE COURT:  
12 I don't have a hard copy at my  
13 disposal, Mr. Belasic.  
14 MR. BELASIC:  
15 Could Mr. Bencomo give the witness a  
16 copy?  
17 MR. BENCOMO:  
18 I will, Your Honor.  
19 May I approach the witness, Your  
20 Honor?  
21 THE COURT:  
22 Yes.  
23 MR. BENCOMO:  
24 Thank you.  
25 BY MR. BENCOMO:  
26 Q. Do you recognize that as an RJR interoffice  
27 memorandum?  
28 A. Yes.  
29 MR. BENCOMO:  
30 Carl, would you please blow that up  
31 where it has the RJR, the subject and who  
32 the author and addressee are, and blow  
20313  
1 that up for the jury, please.  
2 BY MR. BENCOMO:  
3 Q. And that is an RJR interoffice memorandum;  
4 correct, sir?  
5 A. I believe it to be.  
6 Q. What is the date of that memorandum?  
7 A. December 4, 1973.

8 Q. And what is the subject of the memorandum?  
9 A. It says: Cigarette concept to assure RJR a  
10 larger segment of the youth market.  
11 Q. And who is the author of the memorandum?  
12 A. Frank Colby.  
13 Q. And who was Frank Colby?  
14 A. He was the head librarian at R. J. Reynolds  
15 Research & Development Department.  
16 Q. That is the department, if you will, that you  
17 yourself go and familiarize yourself with cigarette  
18 design issues and scientific issues; is that  
19 correct?  
20 A. The R&D library is in the Research &  
21 Development Department.  
22 Q. And he would be, according to you, the head  
23 librarian of that particular library?  
24 A. It's not just according to me. He was the  
25 head librarian.  
26 Q. And it was addressed to who?  
27 A. Mr. R. A. Blevins, Jr., director of marketing  
28 planning.  
29 Q. Now, was there a suggestion about developing  
30 a particular type of cigarette?

31 MR. BENCOMO:

32 And Carl, would you be kind enough to  
20314

1 blow up the summary and that first  
2 sentence?

3 BY MR. BENCOMO:

4 Q. And would you please read that to yourself,  
5 Dr. Townsend?

6 A. Read it to myself?

7 Q. Please.

8 MR. GAY:

9 Objection. There is a question  
10 pending, I think.

11 MR. BENCOMO:

12 Well, I want him to -- I will go on.  
13 I will withdraw the question and rephrase  
14 it.

15 BY MR. BENCOMO:

16 Q. Dr. Townsend, would you please read that  
17 first sentence right after Summary?

18 A. To myself or outloud?

19 Q. No, please, to yourself.

20 A. Okay.

21 Okay.

22 Q. Now, does that not suggest a development of  
23 an RJR youth appeal brand going back to the  
24 technological design of the Winston and other  
25 filtered cigarettes of the 1950s?

26 MR. BELASIC:

27 Objection. No personal knowledge.

28 THE COURT:

29 Overruled. Answer the question, if  
30 you are able to.

31 A. I think superficially it appears that  
32 Dr. Colby is suggesting that we increase, increase

20315

1 tar level back to halfway between 1973 and 1950.

2 Q. And is it not a fact that Dr. Colby at the  
3 very bottom, the last sentence --

4 MR. BENCOMO:

5 And Carl, would you please blow that  
6 up where it said "Still with an old  
7 style," the very last sentence.  
8 BY MR. BENCOMO:  
9 Q. Would you read that outloud for the benefit  
10 the jury?  
11 A. Sure.  
12 Still, with an old style filter, any  
13 desired additional nicotine, in quote,  
14 kick could be easily obtained through pH  
15 regulation.  
16 Q. And that's what Dr. Colby was suggesting; is  
17 that not correct?  
18 A. I think Dr. Colby did suggest that to  
19 Mr. Blevins in the marketing planning.  
20 The fact is, of course, neither of those  
21 happened. We did not increase the tar level of the  
22 products, we did not in any way change the pH of  
23 commercial products.  
24 Q. Sir, you did not begin working with Reynolds  
25 until 1977. Is that not correct?  
26 A. That is correct.  
27 Q. You do not know what happened between 1973  
28 and 1977; correct?  
29 A. No, that's not correct at all. I do know  
30 what happened to our products.  
31 For example, some of the summaries that I  
32 have presented in my direct examination make it

20316

1 clear what happened to the products in terms of tar  
2 and nicotine yield and the major reduction that  
3 occurred.

4 I do know what happened with pH, and I  
5 testified yesterday that pH of cigarette smoke for  
6 Reynolds products has not changed. It's been six,  
7 plus or minus about two-tenths, of a pH unit, and in  
8 fact has not changed even when we added ammonia to  
9 products, took ammonia out of products.

10 So I do know what's happened to our products  
11 not only between the period of '73 to '77 when I  
12 started, but even before '73.

13 Q. Well, let's go then to the area of  
14 advertising, sir.

15 MR. BENCOMO:

16 And Carl, would you please publish to  
17 the Court, to the witness and to opposing  
18 counsel Exhibit 4622.

19 MR. BELASIC:

20 No objection, Your Honor.

21 MR. BENCOMO:

22 May we publish, Your Honor?

23 THE COURT:

24 You may publish.

25 MR. BENCOMO:

26 Carl, would you please highlight the  
27 first three bold lines where it begins,  
28 "Can we have"? And would you blow that up  
29 for the jury, please?

30 BY MR. BENCOMO:

31 Q. You do recognize that as an article that was  
32 run by your employer, do you not, sir, the R. J.

20317

1 Reynolds Tobacco Company?

2 A. I think generally that's correct.  
3 Q. And the lead on that article asks:  
4 Can we have an open debate about  
5 smoking, question mark.  
6 Is that not correct?  
7 A. That's what this says.  
8 Q. And this article was run in newspapers and  
9 magazines in the 1980s; is that not correct, sir?  
10 A. I'm not sure of the circulation, how  
11 widespread the circulation was. I do understand  
12 that this was published at least to some degree in  
13 the 1980s.  
14 Q. And you were working for Reynolds at that  
15 time, were you not?  
16 A. Yes.  
17 MR. BENCOMO:  
18 Carl, would you please go to the last  
19 two sentences of that advertisement and  
20 blow that up?  
21 BY MR. BENCOMO:  
22 Q. And Reynolds' position at that time was that  
23 there were no questions about smoking, just the  
24 opposite; is that correct? That there are a lot of  
25 questions, yet no simple answers. Was that not  
26 their position, sir, yes or no?  
27 A. Well, not exactly.  
28 I think it's clear that what this document  
29 was trying to do is say --  
30 Q. Sir, excuse me.  
31 MR. GAY:  
32 Objection, Your Honor.

20318

1 MR. BELASIC:  
2 Objection, Your Honor.  
3 MR. BENCOMO:  
4 May we approach, Your Honor?  
5 THE COURT:  
6 Approach the bench, please.  
7 (At sidebar:)  
8 THE COURT:  
9 I recognize he didn't say yes or no  
10 as you wanted him to. He said not  
11 exactly, which I think is tantamount to a  
12 no, and I would like to explain, and you  
13 cut him off.  
14 If that's not what you are going to  
15 say, Mr. Belasic, you may say what you  
16 want to say.  
17 MR. BELASIC:  
18 You read my mind.  
19 MR. BENCOMO:  
20 Well, I figured that.  
21 Judge, my position, though, is he's  
22 now trying to interpret that document. I  
23 mean, that is the basis for my problem  
24 with that, again.  
25 THE COURT:  
26 Well --  
27 MR. BENCOMO:  
28 Do you see what I'm saying?  
29 THE COURT:  
30 What do you mean by that? You asked  
31 him --

1 I asked him specifically was that  
2 their position. I mean, that's what their  
3 position is.

4 THE COURT:

5 I think he has a right to give his  
6 answer. If you want to ask follow-up  
7 questions, you have a right to do that.

8 MR. BENCOMO:

9 Okay. That's fine.

10 (In open court:)

11 THE COURT:

12 I'm going to read the question to  
13 you, I'm going to read the part of the  
14 answer that you gave before you stopped  
15 talking, and then I will allow you to  
16 finish your answer.

17 THE WITNESS:

18 Thank you, Your Honor.

19 THE COURT:

20 The question was:

21 And Reynolds' position at that time  
22 was that there were no questions about  
23 smoking, just the opposite; is that  
24 correct? That there are a lot of  
25 questions, yet no simple answers. Was  
26 that not their position, sir, yes or no?

27 You say:

28 Well, not exactly. I think it's  
29 clear that what this document was trying  
30 to do is say --

31 A. -- is say that the scientific information is  
32 not completely clear. I think that was the basic

1 message of this document.

2 Q. And then it concludes that:

3 Like any controversy, this one has  
4 more than one side. We hope the debate  
5 will be an open one.

6 Is that not correct?

7 A. That's what it says.

8 Q. Thank you.

9 MR. BENCOMO:

10 Carl, would you please now go to  
11 Exhibit 43 -- 4238, rather, please?

12 May we publish, Your Honor?

13 MR. BELASIC:

14 No objection, Your Honor. But could  
15 the witness be given a hard copy so he  
16 could see the whole thing?

17 MR. BENCOMO:

18 Be happy to, Your Honor.

19 THE COURT:

20 You may publish it.

21 MR. BENCOMO:

22 Thank you.

23 THE WITNESS:

24 Thank you, Your Honor.

25 THE COURT:

26 The witness has a copy.

27 MR. BENCOMO:

28 Thank you.



29 BY MR. BENCOMO:  
30 Q. Sir, what is the title of that Reynolds ad?  
31 A. The title is: Smoking and Lung Cancer: A  
32 Second Opinion.

20321

1 Q. And you do recognize this as yet another  
2 Reynolds ad that ran in the '80s?  
3 A. I believe it is yes.  
4 MR. BENCOMO:  
5 Carl, would you please blow up the  
6 first three sentences?  
7 BY MR. BENCOMO:  
8 Q. The first three sentences read, and I quote:  
9 It has been stated so often that  
10 smoking causes cancer, it's no wonder most  
11 people believe this is an established  
12 fact.  
13 But in fact it is nothing of the  
14 kind.  
15 The truth is that almost three  
16 decades of research have failed to produce  
17 scientific proof for this claim.  
18 Did I read that correctly, Dr. Townsend?  
19 A. Yes, you did.  
20 Q. Thank you.  
21 MR. BENCOMO:  
22 Now, Carl, would you please go to the  
23 very last sentence in that particular ad,  
24 the bottom right-hand corner. There you  
25 are. Thank you. Would you please blow  
26 that up?  
27 BY MR. BENCOMO:  
28 Q. In our opinion, the issue of smoking  
29 and lung cancer is not a closed case.  
30 It's an open controversy.  
31 Did I read that correctly, sir?  
32 A. Yes.

20322

1 Q. Now, sir, are you familiar with Dr. Claude  
2 Teague? I believe you already have spoken about  
3 him.  
4 MR. GAY:  
5 Objection, repetitious.  
6 THE COURT:  
7 He's answered that question in the  
8 affirmative. Go on to the next question,  
9 please.  
10 BY MR. BENCOMO:  
11 Q. Sir, are you familiar with a survey that  
12 Dr. Teague performed in February of 1953 on cancer  
13 research?  
14 MR. BELASIC:  
15 Objection, repetitious. Covered two  
16 days ago.  
17 THE COURT:  
18 Overruled. Answer the question, if  
19 you are able to.  
20 A. Yes, I am familiar with that.  
21 MR. BENCOMO:  
22 Carl, would you please blow up or  
23 pull up Plaintiffs' Exhibit 4387, which  
24 has, I believe, already been admitted. If  
25 not, please publish it for the benefit of

26 the witness, the Court and counsel.  
27 MR. BELASIC:  
28 No objection, Your Honor.  
29 MR. BENCOMO:  
30 Thank you.  
31 MR. LONG:  
32 Your Honor, I have an objection on a

20323

1 different issue. May I approach?

2 THE COURT:

3 Yes.

4 (At sidebar:)

5 MR. LONG:

6 I move to strike from the record the  
7 witness' actual lack of testimony  
8 regarding the last document.

9 Again, Mr. Bencomo puts a document  
10 up, says is this the title, yes, he reads  
11 something which the jury can see that he's  
12 reading it correctly. Did I read that  
13 correctly. That's really irrelevant. The  
14 jury can make that determination.

15 He asked no substantive questions  
16 about the document. This is not cross-  
17 examination.

18 MR. BENCOMO:

19 I have two statements to make on  
20 that.

21 Number one, I am laying the predicate  
22 for the question that I am asking this  
23 witness about this document that we are  
24 now coming up with, because that was --  
25 excuse me, let me just finish.

26 THE COURT:

27 Okay.

28 MR. BENCOMO:

29 The second thing is that when -- and  
30 this was done early on in the case where  
31 some of the lawyers said read that to  
32 yourself or let the jury read it. The

20324

1 record is going to be very silent on who  
2 read what or what was read, et cetera, et  
3 cetera, for appellate purposes.

4 So there is two reasons for that.

5 But more importantly, as I indicated,  
6 I want to make sure that that is their  
7 position. Now I'm going into this  
8 document in 1953, 31 years earlier, and  
9 I'm going to ask him about the position 31  
10 years earlier.

11 THE COURT:

12 I'm going to give you some latitude  
13 to do that.

14 But the objection is to reading  
15 documents without following up with a  
16 question.

17 MR. BENCOMO:

18 I understand.

19 THE COURT:

20 And it looks like you are doing the  
21 same thing I cautioned you not to do in  
22 the last bench conference.

23 I will give you some latitude to get  
24 your cross done. But every time you do  
25 it, we are going to get the same  
26 objection.

27 And you have got to ask the witness a  
28 question if you are going to read him some  
29 text. I will give you a little latitude  
30 at this point, but that's going to be the  
31 ruling.

32 (In open court:)

20325

1 THE COURT:

2 The objection is overruled.

3 MR. BENCOMO:

4 Would you like a hard copy,  
5 Dr. Townsend?

6 THE WITNESS:

7 I would, please.

8 Thanks.

9 MR. BENCOMO:

10 Your Honor, may we publish now?

11 MR. BELASIC:

12 No objection.

13 THE COURT:

14 You may publish.

15 MR. BENCOMO:

16 Thank you, Your Honor.

17 Carl, would you please blow up the  
18 title and also the name of the author, and  
19 blow that up, please. Thank you.

20 And I believe the jury can see the  
21 title of the article and the author.

22 BY MR. BENCOMO:

23 Q. The date on that, sir, for the record is --  
24 what is the date on that particular article?

25 A. February 2nd, 1953.

26 Q. And sir, if you will go to the third physical  
27 page of the article --

28 MR. BENCOMO:

29 May we publish, Your Honor?

30 THE COURT:

31 You may publish it.

32 MR. BENCOMO:

20326

1 And Carl, would you please blow up  
2 the first sentence under "Object."

3 BY MR. BENCOMO:

4 Q. Sir, do you not agree that the object of  
5 Dr. Teague's report was to give a broad, general  
6 survey of cancer research with emphasis on studies  
7 actually or potentially related to carcinogens from  
8 tobacco?

9 A. I do agree with that. This was a literature  
10 survey of what's known about carcinogenesis from  
11 tobacco.

12 MR. BENCOMO:

13 And Carl, would you go to the sixth  
14 page of the article, sixth physical page,  
15 please, and blow that up?

16 May we publish, Your Honor?

17 THE COURT:

18 You may publish it.

19 MR. BENCOMO:

20 The bottom paragraph that reads  
21 "Several statistical studies"?  
22 BY MR. BENCOMO:  
23 Q. And Dr. Townsend, isn't it a fact that the --  
24 some of the studies in the article based on clinical  
25 data on cancer of the respiratory system indicated  
26 an abnormal increase in the incidence of cancers,  
27 particularly among men, during the last several  
28 decades? That would be cancers of the respiratory  
29 system.  
30 A. In general, that is what it says. It does  
31 say it's based on statistical studies, meaning  
32 epidemiology.

20327

1 Q. Now, sir, if you will read in the middle of  
2 that particular paragraph where it states:  
3 The recent rate of increase of cancer  
4 of the respiratory system rather closely  
5 parallels the recent introduction and rate  
6 of increase of cigarette consumption.  
7 Do you see that?  
8 A. I see where it says that.  
9 Q. And it goes on to say:  
10 And this, together with the fact that  
11 until very recently the vast majority of  
12 cigarette smokers have been men, has  
13 raised a very considerable question.  
14 Now, according to Dr. Teague, that issue as  
15 to the parallel relationship between cigarette  
16 smoking and cancer of the respiratory system was  
17 raising considerable questions at that time, meaning  
18 back 1953 or even before that; is that correct?  
19 A. Yes, it is correct. And it's not just  
20 Dr. Teague. In fact, Dr. Teague is paraphrasing  
21 from what he found in the literature.

22 MR. BENCOMO:  
23 And Carl, would you please go to what  
24 I believe is the twelfth physical page,  
25 which is numbered page eleven in the  
26 article?

27 And may we publish, Your Honor?  
28 THE COURT:  
29 You may publish it.

30 MR. BENCOMO:  
31 Carl, would you just highlight  
32 "Several recent" and then one through

20328

1 eight, please, and blow those up to the  
2 extent that --

3 BY MR. BENCOMO:

4 Q. I know it's hard to read but, Dr. Townsend, I  
5 know you have a hard copy in front of you.

6 You said that Dr. Teague borrowed or lifted  
7 or got all of this from his reading of the available  
8 literature; is that correct?

9 A. In general that's correct, but we as  
10 scientists don't call it borrowed or lifted when we  
11 do a survey article from the scientific literature.

12 Q. What terminology would you use? Let's use  
13 yours.

14 A. A survey report or a survey of the scientific  
15 literature.

16 Q. Now, that survey had shown that excessive and

17 prolonged use of tobacco, especially cigarettes,  
18 seems to be an important factor in the induction of  
19 lung cancer; is that not correct, sir?

20 A. Yes, that's what it says.

21 Q. Also that the incidence of lung cancer is  
22 considerably higher among moderately heavy to chain  
23 smokers compared to the general hospital population  
24 without cancer; is that not correct, sir?

25 A. That's what it says, yes.

26 MR. LONG:

27 Your Honor, may we approach?

28 THE COURT:

29 You may approach.

30 (At sidebar:)

31 MR. LONG:

32 Move to strike Mr. Bencomo's

20329

1 testimony. The same thing is happening.

2 There was one question, Mr. Bencomo read

3 the document into the record.

4 The only question to the Doctor was:

5 Do you see that? Then he starts reading

6 this. It says this, is that correct,

7 that's correct. Then he moves on.

8 It's improper cross-examination. For

9 some reason he's reluctant to ask a

10 question of substance, but you can't use a

11 witness just to put documents up so

12 counsel can read them.

13 MR. BENCOMO:

14 Judge, I respectfully disagree

15 because what I am establishing is that all

16 of this information was available in-house

17 back in 1953 to the Research Department.

18 THE COURT:

19 But you haven't asked him that

20 question, and that's the objection. You

21 are reading the document, and there is no

22 follow-up question.

23 You don't need the witness -- we read

24 documents without witnesses. This is a

25 question-and-answer format, and in effect

26 you are putting everything into the record

27 and just asking him to say you read it

28 correctly.

29 The document is in. There is no

30 substantive question to the witness, and

31 that's the complaint.

32 MR. BENCOMO:

20330

1 That's fine. I will rephrase the

2 question. I will be happy to rephrase

3 it. Thank you.

4 (In open court:)

5 MR. BENCOMO:

6 Your Honor, I withdraw the question

7 and will rephrase it.

8 THE COURT:

9 The question is withdrawn, Doctor.

10 Next question please, Mr. Bencomo?

11 BY MR. BENCOMO:

12 Q. Dr. Townsend, the eight different conclusions

13 that Dr. Teague found as a result of his survey are

14 all part in parcel of this report; is that not  
15 correct, sir?  
16 A. These eight statements were part of this  
17 report, if that's your question.  
18 Q. Yes.  
19 Now, isn't it a fact that he surveyed the  
20 then available medical literature on the subject of  
21 cancer?

22 MR. GAY:  
23 Objection, repetitious.

24 THE COURT:  
25 Overruled. Answer the question.

26 A. Dr. Teague did survey what was known about  
27 tobacco smoking and cancer in 1953, and I think  
28 that's evident in the 78 or 80 references that are  
29 in this report.

30 MR. BENCOMO:  
31 Now, Carl, would you please go back  
32 to Exhibit 4238 and put that up on the  
20331

1 screen again?

2 May we publish, Your Honor?

3 THE COURT:  
4 You may publish.

5 MR. BENCOMO:  
6 Thank you.

7 And would you please blow up the very  
8 last sentence of that advertisement?

9 BY MR. BENCOMO:

10 Q. Sir, in spite of Dr. Teague's survey in 1953,  
11 is it not a fact that this advertisement of R. J.  
12 Reynolds in the 1980s, some thirty some odd years  
13 later, states:

14 In our opinion, the issue of smoking  
15 and lung cancer is not a closed case.

16 It's an open controversy.

17 Is that not correct?

18 A. I'm sorry, is not what correct?

19 MR. GAY:  
20 Objection. Asked and answered.

21 THE COURT:  
22 Overruled. Answer the question, if  
23 you are able to.

24 Do you remember the question, please?

25 THE WITNESS:  
26 Can I have it repeated, please, Your  
27 Honor?

28 THE COURT:  
29 Sir, in spite of Dr. Teague's survey  
30 in 1953, is it not a fact that this  
31 advertisement of R. J. Reynolds in the  
32 1980s, some thirty odd years later,

20332

1 states: In our opinion, the issue of  
2 smoking and lung cancer is not a closed  
3 case. It's an open controversy. Is that  
4 not correct?

5 A. If I understand your question right, it is  
6 correct that this 1980ish document that is on the  
7 screen says: In our opinion, the issue of smoking  
8 and lung cancer is not a closed case.

9 And that refers to the total proof of  
10 causation including the development of an animal

11 test, the understanding of a mechanism.  
12 It is also very clear from Dr. Teague's --  
13 MR. BENCOMO:  
14 Excuse me, Your Honor.  
15 THE COURT:  
16 Just a moment.  
17 MR. BENCOMO:  
18 May we approach, Your Honor?  
19 THE COURT:  
20 It may be that you are straying from  
21 a response that's germane to the  
22 question. And remember my instructions  
23 you to, your answer has to be germane to  
24 the question. And if it is germane,  
25 continue.  
26 THE WITNESS:  
27 And I think it is germane, Your  
28 Honor, because he's drawing a parallel to  
29 this.  
30 THE COURT:  
31 Let's try it. If I get an objection,  
32 I will rule on it.

20333

1 A. So that's what this document is referring to  
2 is the scientific proof of causation.  
3 And Dr. Teague in 1953 was reporting the  
4 overwhelming statistically significant evidence that  
5 cigarette smoking is a powerful risk.  
6 I don't see a scientific contradiction  
7 between these two articles.  
8 Q. Dr. Townsend, do you remember when  
9 Mr. Belasic asked you whether or not lawyers ever  
10 get involved in telling you or your researchers how  
11 to do research or what you should or should not  
12 research?  
13 A. I do remember that.  
14 Q. And your answer was that they didn't; is that  
15 not correct?  
16 A. Lawyers at R. J. Reynolds do not tell me and  
17 my staff in research and development what to  
18 research or what not to research, what to publish or  
19 what not to publish.  
20 Q. Now, you also mentioned your involvement with  
21 Coresta and your participation in Coresta meetings.  
22 Do you have to provide articles that are  
23 going to be brought before Coresta and that are  
24 going to be discussed at Coresta meetings to a board  
25 or anyone at Coresta before they are actually  
26 published?  
27 A. Are you asking me do I have to have internal  
28 review of anything I, as a Reynolds representative,  
29 would take to Coresta?  
30 Q. Yes.  
31 A. Yes. As any publication that R. J. Reynolds  
32 would put outside of the company, we have it

20334

1 reviewed for scientific accuracy, scientific  
2 quality, we have it reviewed for patent and  
3 regulatory issues, and then we have final management  
4 sign off.  
5 Q. And what was your exact position with Coresta  
6 in February of 1993, do you recall?  
7 A. In '93, I think I was on the scientific

8 commission. I was not a member of the board at that  
9 time.

10 Q. Now, do you know an individual by the name of  
11 J. K. Wells?

12 A. A lawyer?

13 Q. Yes, sir.

14 A. I believe so.

15 Q. And do you know an individual by the name of  
16 R. R. Black?

17 A. I know Dr. Roger Black.

18 Q. And who is Dr. Roger Black employed by?

19 A. He's employed by Brown & Williamson in the  
20 capacity of an agronomics scientist, a real  
21 specialist in tobacco agronomy.

22 Q. Do you know Mr. E. E. Kohnhorst?

23 A. No.

24 Q. Do you know Mr. Jeffrey Wigand?

25 A. Yes.

26 Q. And who is Mr. Wigand?

27 A. He was head of research and development at  
28 Brown & Williamson for a period.

29 Q. Mr. Wigand would also have been a member of  
30 Coresta?

31 A. Well, Brown & Williamson, the company, was a  
32 member of Coresta.

20335

1 I can recall Dr. Wigand attending perhaps one  
2 of our meetings, but he was not functioning in a  
3 directive capacity for Coresta.

4 Q. But you were?

5 A. Yes.

6 Q. What about Mr. T. F. Riehl, R-i-e-h-l?

7 A. Dr. Riehl was actually head of R&D for Brown  
8 & Williamson for a number of years. I know him.

9 Q. And was he in a director capacity with  
10 Coresta?

11 A. No. He attended numerous Coresta scientific  
12 meetings. I can't recall a time he ever sat on the  
13 scientific commission which directs the scientific  
14 work or sat on the board.

15 Q. What about Mr. M. J. McGraw?

16 A. I don't know him.

17 Q. You don't know him.

18 Are you aware of the fact that Coresta wanted  
19 all documents intended for circulation to Coresta  
20 participants to be reviewed in advance by legal  
21 counsel?

22 A. Are you asking me was I aware of that for  
23 Brown & Williamson?

24 Q. For any of its member companies.

25 A. I beg your pardon, I don't understand your  
26 question.

27 Coresta does not want -- Coresta does not  
28 require any particular review by any member  
29 companies or review other than a scientific review  
30 of any documents that it publishes. I don't  
31 understand your question.

32 MR. BENCOMO:

20336

1 Carl, could you please pull up 2333  
2 for the benefit of the Court, the witness  
3 and opposing counsel?

4 MR. SCHNEIDER:



5           Objection, Your Honor. May we  
6 approach?

7           THE COURT:

8           Yes.

9           (AT sidebar:)

10          MR. SCHNEIDER:

11          You may recall this document came up  
12 during qualifications, and we stated some  
13 objections at that time. I'm going to  
14 reiterate them now. Because at the time  
15 you terminated the examination at that  
16 point during qualifications and said let's  
17 take the topic back up on cross on the  
18 merits.

19          This is a document, Your Honor, from  
20 Mr. Wells who was in-house counsel at  
21 Brown & Williamson to Dr. Black, who the  
22 witness just testified was a scientist, an  
23 agronomist at B&W in February of '93.

24          We originally made a claim of  
25 privilege on this document.  
26 Special Master Gianna overruled that  
27 claim, and Your Honor affirmed  
28 Special Master Gianna.

29          But objections as to relevance, 403,  
30 hearsay and other grounds were preserved  
31 until such time as the document was put  
32 up. Now that time has come. They have

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1 put this document up.

2          Our objection is that there is no  
3 linkage, no relevance of the document to  
4 the claims of the class members of this  
5 case.

6          First of all, the document is dated  
7 February '93. This suit was filed in  
8 '94. Whatever happened as a result of  
9 this document, if anything, couldn't  
10 possibly have been the cause of bringing  
11 this lawsuit in 1994, number one.

12          Number two, the purpose of this  
13 document is to introduce a document that  
14 says a lawyer was suggesting that various  
15 things be done to be careful about things,  
16 that, number one, that an author disclose  
17 his funding by the tobacco industry, that,  
18 number two, maybe a couple of these  
19 chapters didn't really need to be in the  
20 monograph.

21          There has been no showing that that  
22 happened, that it affected anything, that  
23 there is any scientific pieces of  
24 information that affected this class.

25          It's just being thrown into the  
26 record to suggest that a lawyer was giving  
27 this advice as if that somehow is  
28 improper, as if a lawyer that is deeply  
29 involved in this industry and all the  
30 regulatory issues shouldn't be giving any  
31 advice on issues like this, to suggest  
32 it's improper without any showing of

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1 linkage to the class, we object on those

2 reasons for both relevance and 403.

3 MR. GAY:

4 A further objection, Your Honor, is  
5 the predicate question to this document is  
6 whether or not Coresta, the organization  
7 Coresta, required people to preapprove or  
8 screen this.

9 So this is not even a Coresta -- this  
10 is something that has something to do with  
11 another company. It's improper predicate.

12 MR. BENCOMO:

13 Judge, he clearly said that he was on  
14 the directive of that organization, that  
15 that organization does not require them,  
16 does not require them to submit anything  
17 to lawyers.

18 This is a clear document, "all  
19 documents intended for circulation to  
20 Coresta participants," he has submitted  
21 documents, his company has submitted  
22 documents, "were reviewed in advance by  
23 legal counsel."

24 And then they condidates for the job  
25 would be Joe Blow, whatever, and then  
26 Shook Hardy & Bacon.

27 Also is the head of research and  
28 development for RJR. This is about a book  
29 where it is recommended that two chapters  
30 on smoke chemistry and tobacco and health  
31 issues, which is what this case is about,  
32 be completed deleted.

20339

1 So that's the relevance as to why  
2 this document should be admitted.

3 MR. SCHNEIDER:

4 A brief response, Your Honor.

5 This is Mr. Wells at Brown &  
6 Williamson, not anybody at Coresta, number  
7 one.

8 Number two, he's giving advice to  
9 Dr. Black about something that took place  
10 at Coresta. There is no showing that any  
11 of these events -- that this advice and  
12 this memo led to anything that impacted  
13 this class.

14 And to toss this memo in is  
15 irrelevant and prejudicial and it should  
16 not happen. It's not linked in any way to  
17 something that Coresta actually did.  
18 There is no proof of that.

19 MR. BENCOMO:

20 The problem is that's exactly the  
21 point. He stands there and says, well,  
22 Coresta doesn't do any of this, and I can  
23 certainly show him this document and ask  
24 him questions about it.

25 THE COURT:

26 Well, is Wells connected with Coresta  
27 in any way?

28 MR. BENCOMO:

29 I think he said that he was.

30 MR. GAY:

31 Wells is a lawyer, Your Honor.

32 Coresta is a scientific organization.  
20340

1 MR. BENCOMO:

2 But this memo goes to Black. Black  
3 sends the notes to Wells about the Coresta  
4 meeting, and then he says -- well, here is  
5 what the thing is. He said: It would be  
6 advantageous if all documents intended for  
7 circulation were reviewed in advance by  
8 legal counsel.

9 Also he talks about the monograph  
10 that all these Coresta participants were  
11 going to be receiving, and all of the  
12 sudden they receive a monograph that  
13 doesn't have articles on smoke chemistry  
14 and health issues as if it never  
15 happened.

16 I mean, that's what these guys --  
17 it's all an illusion, Judge.

18 MR. GAY:

19 Your Honor, Mr. Wells is not even  
20 with this man's company. This is such a  
21 stretch with this witness it's  
22 incredible. Not only is there no  
23 connection --

24 THE COURT:

25 Well, maybe you are not remembering  
26 that this witness is an official of  
27 Coresta at this time. It's not that much  
28 of a stretch if he is an official of that  
29 organization.

30 MR. GAY:

31 But this is an internal B&W  
32 document. This isn't a Coresta document.

20341

1 MR. BENCOMO:

2 But I can cross-examine --

3 MR. GAY:

4 Just a second.

5 MR. BENCOMO:

6 I'm sorry, Charlie.

7 MR. GAY:

8 And this is something somebody wrote  
9 at B&W about something at B&W. This is an  
10 R. J. Reynolds witness, and it has no  
11 connection with his predicate which is:  
12 Does Coresta require prescreening of its  
13 scientific articles? It's got nothing to  
14 do with that.

15 MR. BENCOMO:

16 Judge, he's also an expert who has  
17 given opinion based on his whole knowledge  
18 of this whole issue, including Coresta,  
19 including meetings he's been to.

20 I mean, he said, look, I have got  
21 this 25-year experience that spans  
22 everything I have done in tobacco.

23 THE COURT:

24 The objection is overruled.

25 MR. BENCOMO:

26 Thank you.

27 MR. LONG:

28 Your Honor, I have a request to

29 make.  
30 We had a hearing yesterday on these  
31 issues. I'm going to avoid any further  
32 bell-ringing, and I request that before

20342

1 Mr. Bencomo asks this witness based on  
2 this document whether anybody from Shook  
3 Hardy & Bacon is on the defense team or in  
4 the courtroom, that that be asked and  
5 ruled at the bench so that the bell is not  
6 rung in front of the jury.

7 MR. BENCOMO:

8 Well, do we want to take this up?  
9 How do you want to handle this? Because I  
10 am going to ask him that.

11 THE COURT:

12 He wants to know if you are going to  
13 ask this witness if anybody from any of  
14 these law firms is in this room defending  
15 any of the defendants. And that's what he  
16 objects to if you intend to do it.

17 MR. BENCOMO:

18 I don't think I should be precluded  
19 from asking him that question. So my  
20 answer is I think I will go there.

21 So I guess if you want to -- that's  
22 fine, if you want to consider it.

23 MR. LONG:

24 I would like this ruled on outside  
25 the presence of the jury before the  
26 question is asked because it's a bell-  
27 ringing situation.

28 I don't know how many times  
29 Mr. Bencomo has asked a question only to  
30 then withdraw it, but it's already before  
31 the jury.

32 There is no relevance at all --

20343

1 THE COURT:

2 What do you intend to do, just have  
3 him read this like you were doing?

4 MR. BENCOMO:

5 No, absolutely not. I'm going to  
6 first of all ask him whether or not he  
7 ever received a book or a monograph --

8 THE COURT:

9 With regard to the law firms, that's  
10 all.

11 MR. BENCOMO:

12 With regard to the law firms, I  
13 intend to ask him whether or not -- he  
14 said that lawyers didn't review any  
15 documents. Did he ever submit any  
16 documents to Shook Hardy for their  
17 review?

18 I think I'm entitled to do that. And  
19 then follow up by saying: Do you know  
20 whether or not Shook Hardy is in this  
21 case?

22 THE COURT:

23 The second question I rule improper.

24 MR. BENCOMO:

25 That's fine. Then I will not go

26 there.  
27 MR. LONG:  
28 Thank you, Judge.  
29 (In open court:)  
30 MR. BENCOMO:  
31 Your Honor, may we publish  
32 Plaintiffs' Exhibit 2333?

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1 THE COURT:  
2 Objections to it are overruled. You  
3 may publish it.  
4 MR. BENCOMO:  
5 Thank you, Your Honor.  
6 Carl, would you please blow up  
7 everything from "To" to the "Re" and blow  
8 that up for the jury, please?

9 BY MR. BENCOMO:

10 Q. And that is a memo naming some of the  
11 individuals that I asked you about earlier; is that  
12 not correct.

13 A. Yes.

14 Q. And that is dated February 10th, 1993;  
15 correct, sir?

16 A. Yes.

17 Q. And you were certainly on some directive or  
18 some board with Coresta; is that the not correct?

19 A. Yes, I was on the scientific commission at  
20 that time.

21 Q. And that memo references Coresta meetings;  
22 correct?

23 A. That's what it says.

24 MR. BENCOMO:

25 Now, Carl, would you please go to  
26 where it reads "Tobacco Monograph," and  
27 would you please publish or blow that up,  
28 highlight and blow up not only "Tobacco  
29 Monograph" but those two sentences under  
30 that?

31 MR. BELASIC:

32 Could we have a hard copy for the

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1 witness, Your Honor?

2 THE COURT:

3 He's got it.

4 MR. BENCOMO:

5 Would you please blow that up for the  
6 benefit of the jury?

7 BY MR. BENCOMO:

8 Q. Now, sir, would you read that to yourself,  
9 please.

10 A. I have read it.

11 Q. Do you remember in the year 1993 or 1994  
12 receiving a monograph that discussed tobacco and  
13 areas germane to Coresta and to the cigarette  
14 industry, to these defendants, that did not have a  
15 chapter on smoke chemistry?

16 A. Absolutely not from two different points of  
17 view.

18 First of all, Coresta did commission a  
19 monograph to be published, and as I recall it was in  
20 1993. The scientific commission met in Savannah in  
21 January of 1993, we commissioned the production of  
22 such a monograph on tobacco production, cigarette

23 design and cigarette manufacture.  
24 So a monograph was ultimately produced, but  
25 not in the time frame you are talking about. I  
26 think it was finally published in 1999.  
27 The second point of your question is that  
28 monograph did include a chapter on smoke chemistry.  
29 Q. Did it also include a chapter on tobacco and  
30 health issues, yes or no?  
31 A. No.  
32 And in fact, when the scientific commission

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1 forwarded the proposal to the Coresta board, the  
2 Coresta board decided that a chapter, given the  
3 title of the monograph as I have sort of loosely  
4 said what it is, given that directive, the Coresta  
5 board decided that a chapter on smoking and health  
6 was outside the context of the intent of this  
7 document.  
8 So the Coresta board in fact said we want all  
9 of these chapters, and we think that a chapter on  
10 smoking and health is outside of what we want for  
11 this type of book.  
12 Q. And I think you told the jury earlier that  
13 Coresta is actually not a United States based  
14 corporation, but is a French based corporation; is  
15 that correct?  
16 A. Coresta is a French registered corporation.  
17 MR. BENCOMO:  
18 Carl, you can take that down, thank  
19 you.  
20 Carl, I'm sorry, if you would pull  
21 that up and just highlight the very last  
22 paragraph of that document?  
23 May we publish that, Your Honor?  
24 THE COURT:  
25 The same document?  
26 MR. BENCOMO:  
27 Yes. Thank you.  
28 Just highlight the very last  
29 paragraph, and blow that up for the  
30 benefit of the jury, please.  
31 BY MR. BENCOMO:  
32 Q. Now, would you read that to yourself, sir.

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1 A. Okay, I have read it.  
2 Q. Sir, was it the policy of Coresta to have all  
3 documents intended for circulation to Coresta  
4 participants to be reviewed in advance by legal  
5 counsel?  
6 A. It is not -- it is currently not the policy  
7 of Coresta, and it's never been the policy of  
8 Coresta, to have a legal review of documents that it  
9 produces.  
10 This is a scientific organization. We  
11 protect the science very strictly. There is no  
12 legal review of Coresta.  
13 This document does appear to me to be an  
14 internal document for several reasons, and it's not  
15 unusual for member companies, including Reynolds, to  
16 have internal review of the scientific quality and  
17 the particular information that we as a member  
18 company might provide to Coresta.  
19 But Coresta does no legal review of anything.

20 Q. Thank you.  
21 MR. BENCOMO:  
22 You may take that down.  
23 Your Honor, it's now 10:45.  
24 THE COURT:  
25 We will take our midmorning recess at  
26 this point, ladies and gentlemen, until  
27 11:00 on the wall clock.  
28 (In open court without a jury  
29 present:)  
30 THE COURT:  
31 Let the record reflect the jury has  
32 left the courtroom.

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1 Anything for the record by plaintiffs  
2 counsel?  
3 MR. BENCOMO:  
4 No, Your Honor.  
5 THE COURT:  
6 Defense?  
7 MR. WITTMANN:  
8 No, Your Honor.  
9 THE COURT:  
10 We will recess until 11:00.  
11 (A recess is taken at 10:45 a.m.)  
12 -- -- --  
13 (In open court with a jury present at  
14 11:05 a.m.):  
15 THE COURT:  
16 Mr. Bencomo?  
17 MR. BENCOMO:  
18 Thank you, Your Honor.  
19 Carl, would you kindly put back up  
20 Plaintiffs' Exhibit 2333?  
21 May we publish, Your Honor?  
22 THE COURT:  
23 You may publish.  
24 MR. BENCOMO:  
25 Thank you.

26 BY MR. BENCOMO:

27 Q. Dr. Townsend, are you aware of the fact that  
28 the law firm of Shook Hardy & Bacon and other law  
29 firms in London currently provide precirculation  
30 review of documents for industry associations on  
31 issues of tobacco and smoking?

32 A. Tobacco and smoking? I'm not aware of that

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1 specifically. However, that doesn't surprise me at  
2 all if it were true.

3 Law firms do review internal documents many  
4 times for patent issues, for regulatory issues. So  
5 internal review does not surprise me at all.

6 Q. Sir, my question was are you aware of the  
7 fact that the law firm of Shook Hardy & Bacon --

8 MR. BENCOMO:

9 And Carl would you blow up that last  
10 paragraph, please, where it names a list  
11 of firms beginning with "candidates" and  
12 to the very bottom of it? Thank you.

13 BY MR. BENCOMO:

14 Q. -- provides recirculation review of documents  
15 for the industry -- for the industry, I'm not  
16 talking about individual companies, but for industry

17 association that you and the other defendants belong  
18 to? Are you aware of that, yes or no?

19 A. No, that's not true at all.

20 Industry associations like Coresta, I have  
21 already testified, has no lawyer review.

22 Industry associations like the Tobacco  
23 Science Research Conference has no lawyer review.  
24 So the answer is no.

25 Q. So you disagree, is that not correct, with  
26 the statement that both firms currently provide  
27 precirculation review of documents for industry  
28 associations; is that correct?

29 MR. GAY:

30 Objection. Misrepresents the --

31 MR. BENCOMO:

32 Your Honor, may we approach?

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1 THE COURT:

2 Counsel, approach the bench, please.

3 (At sidebar:)

4 THE COURT:

5 Mr. Bencomo, come read your question,  
6 please.

7 MR. BENCOMO:

8 Can I read it on hers?

9 THE COURT:

10 Yes.

11 MR. BENCOMO:

12 I don't understand what's wrong with  
13 the question.

14 THE COURT:

15 Mr. Gay?

16 MR. GAY:

17 Your Honor, he's misrepresenting  
18 everything about this document.

19 The witness, number one, has answered  
20 the question.

21 Number two, this document talks about  
22 internal review of a company other than  
23 his company, of articles from that company  
24 that would go to the industry  
25 association. It's not talking about,  
26 there is never --

27 THE COURT:

28 It says, just a moment, both firms  
29 currently provide precirculation review of  
30 documents for industry associations.

31 MR. BENCOMO:

32 That's my question.

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1 THE COURT:

2 He asked if the witness disagrees  
3 with that statement.

4 MR. BENCOMO:

5 Exactly.

6 THE COURT:

7 The only thing I can think of that's  
8 improper is he asked it in the present  
9 tense, and this is a ten-year-old  
10 document. You may want to change that.

11 But the objection that you make is  
12 overruled.

13 MR. GAY:



14 Thank you, Your Honor.  
15 (In open court:)  
16 BY MR. BENCOMO:  
17 Q. Do you remember my last question,  
18 Dr. Townsend?  
19 A. Can you repeat it, sir?  
20 MR. BENCOMO:  
21 Could we have it read back, Your  
22 Honor, please?  
23 Your Honor, I will be happy to  
24 rephrase the question.  
25 THE COURT:  
26 You may do that.  
27 BY MR. BENCOMO:  
28 Q. Dr. Townsend, in 1993, are you aware of the  
29 fact that the law firm of Shook Hardy & Bacon  
30 provided precirculation review of documents for  
31 industry associations to which your company and  
32 these defendants belonged, yes or no?  
20352  
1 A. No, that is absolutely not true.  
2 Coresta is the example in discussion here,  
3 Coresta does not conduct lawyer review using Shook  
4 Hardy & Bacon or anyone else.  
5 Shook Hardy or anyone else may provide  
6 internal review of documents before they leave the  
7 company. I don't know the details of that.  
8 But Coresta itself does no lawyer review.  
9 Q. So you disagree with the statement that says,  
10 and I quote: Both firms -- one of which is Shook  
11 Hardy & Bacon -- currently provide -- meaning in  
12 1993 -- precirculation review of documents for  
13 industry associations?  
14 MR. BELASIC:  
15 Objection. Asked and answered.  
16 BY MR. BENCOMO:  
17 Q. Correct?  
18 THE COURT:  
19 Overruled. Answer the question.  
20 BY MR. BENCOMO:  
21 Q. You disagree with that; correct?  
22 A. I disagree with that interpretation of this.  
23 I have told you the facts. Coresta does not use  
24 lawyer review, period.  
25 MR. BENCOMO:  
26 Carl, would you please pull up -- you  
27 can take that down, and would you please  
28 pull up Plaintiffs' Exhibit 4524, and show  
29 that to the witness, to opposing counsel  
30 and to the Court.  
31 MR. BELASIC:  
32 With the exception of our prior  
20353  
1 objections, Your Honor, no further  
2 objections.  
3 MR. BENCOMO:  
4 May we publish, Your Honor?  
5 THE COURT:  
6 I'm not aware of what your prior  
7 objections were. Was it the issues that  
8 the Special Master ruled on?  
9 MR. BELASIC:  
10 That's correct, Your Honor.

11 THE COURT:  
12 Yes.  
13 You may publish. The objections have  
14 been overruled. You may publish.  
15 MR. BENCOMO:  
16 Thank you, Your Honor.  
17 Now, Carl, would you please blow up  
18 from where it reads RJR to the author and  
19 addressee, please, and blow that up for  
20 the jury?  
21 BY MR. BENCOMO:  
22 Q. Sir, do you recognize that as an interoffice  
23 memorandum of R. J. Reynolds?  
24 A. Yes.  
25 Q. And the date of that memorandum is October  
26 11, 1978; is that not correct?  
27 A. That's right.  
28 Q. And the subject is Ames Testing Program. Is  
29 that not correct?  
30 A. Yes.  
31 Q. And what exactly, just for the benefit of the  
32 jury, is the Ames test again?

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1 A. It's a mutagenicity test. It was invented by  
2 a scientist named Bruce Ames. It looks at mutagenic  
3 activity of exposure to -- well, it can be a number  
4 of things, but in this case cigarette smoke.  
5 Q. And so the Ames test is something that the  
6 R. J. Reynolds research and development department  
7 is actually very familiar with; is that not correct?  
8 A. We are very familiar with it because we have  
9 conducted the Ames test since its inception in the  
10 mid -- I think it was the mid '70s.  
11 Q. Now, who is the Dr. Chin K. Lee?  
12 A. He was a scientist at R. J. Reynolds.  
13 MR. BENCOMO:  
14 And the first paragraph, Carl, if you  
15 would please pull that up, and blow it up  
16 for the jury.  
17 BY MR. BENCOMO:  
18 Q. And I will allow the jury to read the first  
19 paragraph before I ask you a question.  
20 Now, sir, isn't it a fact that Dr. Rodgman  
21 was writing Dr. Lee to tell him that he had  
22 discussed with Mr. Max Crohn a proposal and specific  
23 advantages of a proposal he had made concerning the  
24 investigation of tobacco smoke condensate fractions?  
25 A. That appears to be generally correct.  
26 Q. And who is or was Mr. Max Crohn?  
27 A. He was an R. J. Reynolds lawyer.  
28 Q. Thank you.  
29 MR. BENCOMO:  
30 Now, Carl, would you please pull up  
31 the second paragraph, highlight it and  
32 blow it up for the jury.

20355

1 BY MR. BENCOMO:  
2 Q. And I will allow them to read it and then ask  
3 you some questions.  
4 While the jury is reading that, Dr. Townsend,  
5 when did you first become aware of this particular  
6 interoffice memorandum dated 1978?  
7 A. I don't really recall. It's been quite a

8 while ago.

9 Q. It was in connection with litigation, was it  
10 not?

11 A. Yes, it was.

12 Q. So in other words, this document was a  
13 document that was in some sort of black hole before  
14 you ever saw it in connection with litigation. Is  
15 that not correct?

16 MR. BELASIC:

17 Objection, argumentative.

18 THE COURT:

19 Overruled.

20 MR. BENCOMO:

21 I will --

22 THE COURT:

23 Overruled. Answer the question, if  
24 you are able to.

25 A. I'm not aware of the circumstances behind  
26 this document. I certainly wouldn't characterize it  
27 as a black hole.

28 Q. Now, Mr. Crohn, a lawyer, did not want  
29 Dr. Lee to conduct any or investigate mutagenicity  
30 of tobacco smoke condensate fractions; is that not  
31 correct, sir?

32 A. That appears to be generally correct.

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1 Q. And his reason, according to Dr. Rodgman, was  
2 that it was unwise from a legal point of view to do  
3 so; is that not correct?

4 A. Again, that appears generally correct, but I  
5 don't know the detailed circumstances behind this or  
6 whether this is accurate.

7 Q. He went further on to state that to conduct  
8 such experiments would compromise the philosophy of  
9 R. J. Reynolds' defense against claims raised in the  
10 smoke and health issue, is that not correct, as a  
11 reason given to Dr. Rodgman by Mr. Crohn in the  
12 legal department, yes or no?

13 A. I think you have generally paraphrased that  
14 properly.

15 Q. And sir, is it not fair to state that lawyers  
16 should not be involved in science, yes or no?

17 A. Absolutely. Lawyers should not direct  
18 science, they should not tell scientists what  
19 studies to conduct, they should not tell scientists  
20 what studies not to conduct.

21 MR. BENCOMO:

22 Thank you. Would you please pull up  
23 the third paragraph and highlight it for  
24 me, and blow it up, please? Thank you.

25 BY MR. BENCOMO:

26 Q. Sir, the second sentence of that paragraph  
27 indicates that the legal department has been  
28 unwilling to permit denicotinization of whole smoke  
29 condensate; is that not correct?

30 A. I think that's only a portion of the  
31 sentence. It says in fact: Legal has been and is  
32 even unwilling to permit denicotinization -- that is

20357

1 removing of nicotine -- of whole smoke condensate  
2 prior to study of its effect in mouse skin painting  
3 or mutagenicity studies.

4 It seems to me the suggestion here is one

5 needs to do some studies first.  
6 Q. Legal is telling science what type of studies  
7 they can do when; is that not correct, sir?  
8 A. On the surface --  
9 Q. Yes or no?  
10 A. On the surface it appears to be. Again, I  
11 don't know the circumstances behind this document.  
12 And frankly, it puzzles me because I do know  
13 that Ames testing of fractions, smoke fractions, was  
14 conducted shortly after this date, maybe a year  
15 later or, I can't remember, two years later.  
16 So it was conducted. That's why I'm puzzled  
17 by this.  
18 Q. Sir, the bottom line is --  
19 MR. BENCOMO:  
20 And Carl, if you would please  
21 highlight and pull up the very last  
22 paragraph?  
23 BY MR. BENCOMO:  
24 Q. The bottom line is that Max Crohn of legal  
25 refused to allow Dr. Chin Lee, a scientist, to do  
26 studies on the mutagenicity of smoke condensate  
27 fractions and denicotinized tobacco smoke; is that  
28 not correct, yes or no?  
29 A. No. And in fact, if this represented what  
30 actually occurred, then scientists really must not  
31 listen to lawyers, because in fact that work was  
32 done.

20358

1 Q. Dr. Chin Lee was a respected member of your  
2 team, sir?  
3 A. Dr. Lee was a very good scientist at  
4 Reynolds.  
5 MR. BENCOMO:  
6 You can take that down, Carl.  
7 Now, would you please go to Exhibit  
8 4371, and if you would please publish that  
9 for the witness, the Court and opposing  
10 counsel?  
11 BY MR. BENCOMO:  
12 Q. Sir, you are familiar with this document, are  
13 you not?  
14 A. I have seen it before, but I don't know the  
15 circumstances behind it. I'm not entirely sure who  
16 wrote it. It appears to be a draft.  
17 So I really don't know the details of it.  
18 But I have seen it before.  
19 Q. You know it to be an RJR document, do you  
20 not?  
21 A. I do not know that.  
22 MR. BENCOMO:  
23 May we publish, Your Honor?  
24 MR. BELASIC:  
25 Your Honor, with the exception of the  
26 prior objections that were ruled on by the  
27 Special Master, no objection.  
28 THE COURT:  
29 That's been overruled. You may  
30 publish.  
31 MR. BENCOMO:  
32 Thank you, Your Honor.

20359

1 Carl, if you would be kind enough to

2 blow up the first two paragraphs of that  
3 article?  
4 BY MR. BENCOMO:  
5 Q. And that is a privileged and confidential  
6 document, is it not, sir?  
7 A. It says so, but again I don't know for sure  
8 that this is a Reynolds document. It appears to be  
9 a draft. So I don't know the circumstances.  
10 Q. Do you know anyone who worked at the Reynolds  
11 research department whose initials were GRD?  
12 A. Yes.  
13 Q. Who would that be?  
14 A. Bob DiMarco, who was head of research and  
15 development.  
16 Q. So GRD you know to be a Bob DiMarco, is that  
17 not correct, head of research and development at  
18 R. J. Reynolds?  
19 A. I think that's what I just said.  
20 Q. And sir, were you ever made aware that  
21 Mr. DiMarco, then head of research and development  
22 for R. J. Reynolds, had according to Reynolds made a  
23 number of unfortunate statements according to them?  
24 A. I'm not aware of anything like that.  
25 Q. Now, are you aware of the fact that because  
26 of those statements, that there were serious  
27 concerns in the minds of people at Reynolds about  
28 his views on causation? Do you see Item No. 1?  
29 A. I see where it says that. And again, I'm not  
30 aware of anything around this.  
31 I can tell you that Dr. DiMarco was one of  
32 the best leaders we have had in R&D over the years.

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1 He had vision, he took on -- he decided that we  
2 needed to push the development of Premier. He made  
3 many, many very positive changes in R&D.  
4 Q. Sir, when it is mentioned there that it  
5 raises doubts about his views on causation, you know  
6 and you understand the word causation to deal with  
7 the central question, which is whether or not  
8 cigarette smoking causes cancer; is that not  
9 correct, sir?  
10 A. In general, I would agree with that.  
11 Q. And whether or not cigarette smoking causes  
12 lung disease and bladder cancer and emphysema; is  
13 that not correct, sir?  
14 A. In general, I agree with that, yes.  
15 Q. Now, sir, the author --  
16 MR. BENCOMO:  
17 If you will take that down, Carl, and  
18 then go to the other half of that  
19 document, please, that page? Where it  
20 begins, if you would blow that up?  
21 BY MR. BENCOMO:  
22 Q. To put this matter into perspective, the  
23 author says that the explanation given by R&D  
24 personnel, the Research Department, was that the,  
25 quote, lawyers wouldn't let us do it, end quote. Is  
26 that not correct, sir?  
27 A. That is not correct. That is not --  
28 Q. Sir, excuse me, is that not what is put into  
29 perspective in that document, yes or no?  
30 A. If you are asking me is that what is said in  
31 this document, the answer is yes. But that is not

1 Q. That is my only question.

2 MR. BENCOMO:

3 Carl, would you please go to the next  
4 page?

5 And may we publish, Your Honor?

6 THE COURT:

7 You may publish.

8 MR. BENCOMO:

9 Thank you.

10 And if you would please highlight and  
11 blow up the first paragraph?

12 BY MR. BENCOMO:

13 Q. Sir, you talk about your four-step scientific  
14 methodology. It appears as if Dr. DiMarco had  
15 proposed a four-point program himself back when; is  
16 that not correct, yes or no?

17 A. This is not a yes-or-no question.

18 This document does point to a four-point  
19 program, but it is entirely different, it appears,  
20 that the four-step evaluation program/process that  
21 we have talked about earlier in this testimony.  
22 Totally two different things.

23 Q. And I did not mean to analogize it. I just  
24 wanted to establish that he had proposed a four-  
25 point program; is that not correct?

26 MR. GAY:

27 Object to speech.

28 A. According to this memo, I think Dr. DiMarco  
29 proposed a four-point program which includes the  
30 benefits -- and I assume the benefits of smoking --  
31 product modification -- which he certainly was a  
32 champion of -- environmental -- and I assume that

1 means environmental smoke exposure -- and healthy  
2 lung. And I'm not sure what that means.

3 Q. You are not sure what the words healthy lung  
4 means?

5 A. I'm not sure what that means in the context  
6 of a four-point program. It's not clear what the  
7 program is, means or would be.

8 Q. Now, sir, just to put it in perspective, what  
9 were the years that Dr. DiMarco was the head of  
10 research and development at Reynolds?

11 A. He came to RJR in I think 1981 or  
12 thereabouts. He left R. J. Reynolds, retired in  
13 approximately '93, '92, thereabouts.

14 Q. So he was there for approximately a twelve-  
15 year period?

16 A. In that neighborhood.

17 Q. And how long was he the actual head of  
18 research and development?

19 A. The entire time.

20 Q. And are you his successor or was there  
21 someone between you and Dr. DiMarco?

22 A. There have been other people between  
23 Dr. DiMarco and me.

24 Q. Sir, were you -- strike that.

25 MR. BENCOMO:

26 Carl, would you please go to the next  
27 paragraph and highlight it and blow it  
28 up? If you will highlight and blow up the

29 paragraph?  
30 BY MR. BENCOMO:  
31 Q. Now, Dr. DiMarco's program -- and it says in  
32 parentheses ex lung. That means about the lung,

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1 does it not? Is that your understanding of what  
2 that means?

3 A. I would think that that means with the  
4 exception of lung.

5 Q. With the exception of lung, as we understood,  
6 it was doable and reminded them that the key  
7 elements of his program were suggested by Ed Jacob  
8 several years ago.

9 So the one project then according to you that  
10 was not doable was the healthy lung program  
11 suggestion; is that correct?

12 A. I cannot judge that if I don't know what that  
13 program is.

14 Q. You never had the opportunity to discuss the  
15 four-point program with Dr. DiMarco, did you?

16 A. No. Dr. DiMarco and I had many, many  
17 discussions, primarily on product modification and  
18 developing safer cigarettes.

19 Dr. DiMarco was a champion for developing  
20 safer cigarettes. So there were many discussions  
21 along those lines.

22 Q. Now, is it not a fact, sir, that according to  
23 this memo, that Dr. DiMarco was advised that  
24 approval of his program, the four-point program,  
25 would have to await resolution by the lawyers of  
26 questions concerning underlying beliefs questions.  
27 Is that not correct?

28 A. No, I'm not aware of that at all. And it  
29 certainly can't be correct, because in 1981 when he  
30 came to R. J. Reynolds, he started the Premier  
31 project, which is to me the core of this four-point  
32 program. He did it.

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1 Q. Sir, do you know whether or not the questions  
2 by the lawyers concerning the underlying beliefs  
3 questions had to do with the fact that Mr. DiMarco  
4 was considered to be by nature adversarial? Do you  
5 know that? Look at the first page of that.

6 MR. BENCOMO:

7 Carl, if you would go back to the  
8 first page, and blow up where it says, "To  
9 put this matter into perspective," and  
10 blow that whole thing up. Thank you.

11 MR. GAY:

12 Object to the form.

13 THE COURT:

14 Would you ask --

15 MR. BENCOMO:

16 I'm happy to rephrase, Your Honor.

17 THE COURT:

18 Would you ask the witness a question,  
19 please?

20 MR. BENCOMO:

21 Yes, Your Honor.

22 BY MR. BENCOMO:

23 Q. Sir, are you aware of the fact that the  
24 writers of this particular document were of the  
25 opinion that Mr. DiMarco was by nature adversarial,

26 yes or no?  
27 A. I'm not aware of that. I don't know what's  
28 meant by this.  
29 I do know that Dr. DiMarco was very  
30 passionate in his beliefs which included developing  
31 safer cigarettes.  
32 Q. And sir, you do not know whether or not this

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1 part of the second page -- Carl, if we could go back  
2 to this -- that says approval of his program -- if  
3 you would blow that up, Carl, the second paragraph,  
4 the very bottom -- that approval of his program  
5 would have to await resolution by the lawyers of  
6 questions concerning underlying beliefs questions?

7 Beliefs questions such as, Dr. DiMarco, do  
8 you believe that cigarette smoking causes cancer?  
9 Do you know if that's what they are referring to?

10 A. I'm sorry, that was a very confusing  
11 question. Can you break it down into one question?

12 Q. Yes. Do you know if what they are referring  
13 to is the fact that they had to determine what  
14 Dr. DiMarco's beliefs really were when it came to  
15 the issue of smoking and health?

16 A. I'm sorry, I still don't understand. Can you  
17 simplify or rephrase?

18 Q. You do not know whether or not what the  
19 lawyers had to resolve was the question of whether  
20 or not Mr. DiMarco's beliefs had to do with the fact  
21 that he believed that smoking causes cancer?

22 MR. GAY:

23 Object to the form.

24 THE COURT:

25 Overruled. Answer the question, if  
26 you are able to.

27 A. I'm not aware of whoever wrote this document,  
28 of what they had in their mind. I have no idea.

29 I do know that Dr. DiMarco believed that  
30 heavy smoking, as heavy exposure to anything, may  
31 cause cancer. His common phrase was "The poison is  
32 in the dose." Even fairly innocuous materials can

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1 cause problems at high doses.

2 Q. His favorite phrase was "The poison is in the  
3 dose"? Is that correct?

4 A. That's correct.

5 MR. BENCOMO:

6 Carl, would you please go to the next  
7 page, and highlight the second paragraph  
8 and blow it up, please?

9 May we publish, Your Honor?

10 THE COURT:

11 You may publish it.

12 BY MR. BENCOMO:

13 Q. I will give the jury a moment to read that  
14 paragraph.

15 Sir, does your four-step scientific  
16 methodology that you discussed with the jury earlier  
17 on the -- was it the Premier or the Eclipse?

18 A. On the Eclipse.

19 Q. On the Eclipse, does your four-step  
20 scientific methodology require close legal  
21 monitoring, yes or no?

22 A. Absolutely not. The science that we conduct



23 does not, nor does it include, close legal  
24 monitoring. This makes no sense to me whatsoever.  
25 Q. Sir, do you see where it was apparently  
26 explained to Dr. DiMarco that the real concern was  
27 with regard to his, meaning Dr. DiMarco's,  
28 underlying beliefs on the causation issue in the  
29 context of smoking and health litigation?

30 MR. BELASIC:

31 May we approach, Your Honor?

32 THE COURT:

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1 Yes.

2 (At sidebar:)

3 MR. BELASIC:

4 The witness has now said a half dozen  
5 times that he doesn't know who wrote this  
6 document and he doesn't know what whoever  
7 wrote this document said about  
8 Dr. DiMarco.

9 All Mr. Bencomo is doing is reading  
10 the document and asking do you see that he  
11 said this.

12 I think he established his lack of  
13 personal knowledge. There is no rule --  
14 Article 602, foundation, about asking a  
15 witness questions about a document he  
16 doesn't know, a conversation that he  
17 didn't hear, and an author he doesn't  
18 know.

19 MR. BENCOMO:

20 You know, Judge, it's odd, because  
21 what I really asked him was whether or not  
22 the four-step scientific methodology  
23 requires close legal monitoring as they  
24 are suggesting in there.

25 There is a lot of issues that have to  
26 do with research and development that  
27 apparently the legal department had its  
28 hands on, that this man keeps telling this  
29 jury legal doesn't ever get involved.

30 And all of the sudden he's starting  
31 to say, well, you know, I don't understand  
32 this. The reason he doesn't understand

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1 this is because he's trying to say, you  
2 know, I already said that it doesn't  
3 impact, lawyers don't impact what we do.

4 But apparently lawyers do impact what  
5 is being done, or certainly what's being  
6 done while this man was head of research  
7 and development.

8 MR. BELASIC:

9 It doesn't justify the questions.

10 THE COURT:

11 I think the question is appropriate  
12 if he follows it up with an attempt to get  
13 an explanation of why this was put in this  
14 context during this memorandum.

15 So I'm going to overrule the  
16 objection at this point. But you need to  
17 follow it up with a real question.

18 MR. BENCOMO:

19 Yes, Your Honor.

20 (In open court:)  
21 THE COURT:  
22 The objection is overruled and you  
23 should answer the question.  
24 The question is as follows:  
25 Sir, do you see where it was  
26 apparently explained to Dr. DiMarco that  
27 the real concern was with regard to his,  
28 meaning Dr. DiMarco's, underlying beliefs  
29 on the causation issue in the context of  
30 smoking and health litigation?  
31 A. I can see where it says that in this  
32 document. Dr. DiMarco did believe that cigarette  
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1 smoking can cause cancer.  
2 Q. Let me make sure, then, Dr. DiMarco did not  
3 believe that smoking may. Dr. DiMarco said and  
4 believed that cigarette smoking can cause cancer; is  
5 that correct?  
6 A. That would be my interpretation of what I  
7 think his position was on causation.  
8 Q. And that was the position of the head of  
9 research and development at Reynolds at least until  
10 he retired; is that not correct, sir?  
11 A. In general, I would agree with that.  
12 Q. And he was there until 1980-what or '90-what?  
13 A. I would say about '92, '93, thereabouts.  
14 MR. BENCOMO:  
15 Carl, would you please take that down  
16 and go to the very next page?  
17 And may we publish, Your Honor?  
18 THE COURT:  
19 You may publish it.  
20 MR. BENCOMO:  
21 Carl, would you please blow up the  
22 first full paragraph and highlight that  
23 for the jury? Thank you.  
24 BY MR. BENCOMO:  
25 Q. And I will give the jury the opportunity to  
26 read that paragraph before I ask you some questions,  
27 Dr. Townsend.  
28 Is everybody finished reading that? Thank  
29 you very much.  
30 Dr. Townsend, is it fair to state that S and  
31 H, when it talks about an S and H case, that that is  
32 referring to a smoking and health case?  
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1 A. I think that's fair.  
2 Q. And is it not fair, sir, to state that this  
3 case that you are testifying in is an S and H case?  
4 A. I think I would agree with that.  
5 Q. And I will concede that you are very bright  
6 and articulate.  
7 MR. GAY:  
8 Objection to speech.  
9 BY MR. BENCOMO:  
10 Q. Sir, have you ever been in the presence of a  
11 group of lawyers who do not represent you but who  
12 represent the industry where they have worked with  
13 you, prepared you so as to reduce the risk of your  
14 making any statement on cross-examination that would  
15 be prejudicial to your company's position, yes or  
16 no?

17 A. Absolutely not. That's a ludicrous concept,  
18 it really is.  
19 I'm here telling what R. J. Reynolds has done  
20 over the years to reduce the risks, I'm talking  
21 about cigarette design, and it's just as simple as  
22 that.

23 MR. BENCOMO:

24 Carl, would you please highlight the  
25 very next sentence of the very next  
26 paragraph, which is approximately five  
27 lines, where it begins "From a legal  
28 standpoint," and ends with "underlying  
29 belief."

30 BY MR. BENCOMO:

31 Q. And I will give the jury an opportunity to  
32 read that statement.

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1 Is everyone finished reading? Thank you.

2 Dr. Townsend, has anyone else ever told you  
3 that there are substantial risks, litigative,  
4 meaning trial risks, associated with having an  
5 individual such as yourself, head of the Research  
6 Department, who believes that smoking causes  
7 disease? Has anyone told you that before?

8 A. Absolutely not. It has never happened, and  
9 it never will.

10 Q. Sir, you are aware, are you not, that at the  
11 time of this memo, Mr. DiMarco believed that smoking  
12 caused disease?

13 MR. LONG:

14 Objection, repetitious.

15 BY MR. BENCOMO:

16 Q. Yes or no?

17 THE COURT:

18 You asked that question and he  
19 answered it in the affirmative at least  
20 twice, Mr. Bencomo.

21 The objection under repetitive basis  
22 is sustained. Next question, please.

23 MR. BENCOMO:

24 I will go on to something else, yes,  
25 Your Honor.

26 BY MR. BENCOMO:

27 Q. And sir, that document suggests, does it not,  
28 that R. J. Reynolds certainly doesn't want someone  
29 at the head of research and development who would  
30 believe that smoking causes disease; is that not  
31 correct?

32 A. Well, I think it's correct that you may

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1 interpret this document that way.

2 I think the facts are that Dr. DiMarco was  
3 one of the longest running vice presidents of R&D in  
4 the history of R&D. He was there for an incredibly  
5 long time, given the snapshot of who else was head  
6 of that department.

7 Q. Now, sir, you are now the head of research  
8 and development at Reynolds, and you don't believe  
9 that smoking causes disease, do you?

10 A. That completely misstates all the testimony  
11 that we have been through here over the last several  
12 days.

13 I have made it clear what my position, what

14 my understanding of the biology and toxicology of  
15 smoking and health is.  
16 And it is -- I will say it once again -- that  
17 cigarette smoking is a strong, clear, inherent risk  
18 for lung cancer, emphysema, bronchitis,  
19 cardiopulmonary -- or cardiac disease, chronic  
20 obstructive pulmonary disease and other diseases, no  
21 questions about it.

22 And cigarette smoking may cause or may  
23 contribute to causing those diseases in certain  
24 individuals.

25 I don't dispute that cigarette smoking may  
26 cause cancer and other diseases. And in fact, I  
27 have already stated to this jury and to this Court  
28 that cigarette smoking more probably than not does  
29 cause it.

30 Q. Excuse me, I don't believe you answered my  
31 question, so I'm going to ask it again.

32 MR. BENCOMO:

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1 I'll ask the Court Reporter to please  
2 read my question back.

3 MR. BELASIC:

4 Object to the speech, Your Honor.

5 THE COURT:

6 Now, sir, you are now the head of  
7 research and development at Reynolds, and  
8 you don't believe that smoking causes  
9 disease, do you?

10 MR. BENCOMO:

11 All I wanted was a yes or a no.

12 MR. LONG:

13 Objection, Your Honor.

14 THE COURT:

15 Sustained. Answer the question, if  
16 you are able to?

17 BY MR. BENCOMO:

18 Q. My question is, sir -- let me repeat it: You  
19 are now the head of research and development at  
20 Reynolds, and you do not believe that smoking causes  
21 disease, yes or no?

22 MR. BELASIC:

23 Objection, Your Honor. He just gave  
24 the explanation to the same question.

25 THE COURT:

26 Mr. Belasic, please follow my  
27 instructions to approach the bench and not  
28 verbalize your objections.

29 The objection is overruled. Answer  
30 the question, if you are able to.

31 BY MR. BENCOMO:

32 Q. Yes or no?

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1 A. I think a yes-or-no answer is not appropriate  
2 to the way you phrased that question.

3 You are saying I don't believe -- you are  
4 asking me that I don't believe that cigarette  
5 smoking causes cancer, and I'm saying that I think  
6 it's more probable than not.

7 I don't know scientifically right here today  
8 that cigarette smoking by itself, in itself,  
9 directly causes cancer.

10 Do I think it may? Do I think it's more

11 likely than not? Yes.  
12 So I can't answer your question in a clean  
13 yes-or-no fashion.  
14 MR. BENCOMO:  
15 Carl, would you please go back to  
16 Exhibit 4622. Take that down and go back  
17 to Exhibit 4622, please.  
18 And may we publish that, Your Honor?  
19 THE COURT:  
20 You may publish it.  
21 MR. BENCOMO:  
22 And Carl, would you highlight the  
23 sentence that reads "Over the years," and  
24 then the one right below it that reads  
25 "But this is far."  
26 And blow that up for the benefit of  
27 the jury, please.  
28 BY MR. BENCOMO:  
29 Q. Now, sir, that ad suggests that it is far  
30 from the truth that the issue of smoking and health  
31 is closed; is that not correct?  
32 A. In general that's what it seems to say.

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1 MR. BENCOMO:  
2 Carl, you can take that down.  
3 Would you please go back to Exhibit  
4 5319, and would you please pull it up for  
5 the witness, the Court and opposing  
6 counsel?  
7 BY MR. BENCOMO:  
8 Q. And you are familiar with that report, are  
9 you not, sir?  
10 A. I have seen it before, yes.  
11 Q. That's Dr. Rodgman's report of '62?  
12 A. This is a report by Dr. Rodgman.  
13 Q. And is that the report that you first saw in  
14 connection with litigation or did you see it when  
15 you were reviewing the thousands of documents that  
16 you told this jury you reviewed in order to become a  
17 designer, cigarette designer?  
18 A. I really can't recall the first time I saw  
19 this report.  
20 I think there are several versions. There is  
21 a final report that is in the library. There are  
22 several draft documents as well.  
23 MR. BENCOMO:  
24 May we publish, Your Honor?  
25 THE COURT:  
26 Objection?  
27 MR. BELASIC:  
28 No objection, Your Honor.  
29 THE COURT:  
30 You may publish it.  
31 MR. BENCOMO:  
32 Carl, would you please highlight the

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1 upper left-hand portion where it shows the  
2 author and the division and the date,  
3 please?  
4 BY MR. BENCOMO:  
5 Q. And that is Dr. Rodgman's article, he being  
6 the author, the division is chemical research, and  
7 the date is 1962; correct?

8 A. Yes. And the number of the report, it's RDM,  
9 which stands for Research Department Memorandum  
10 1962, and then there is no number, which means that  
11 this hasn't been issued. So it's probably a draft  
12 form.

13 Q. But you said that the final product is  
14 sitting in the library of Reynolds. Is that not  
15 correct?

16 A. I think it is. But all I'm saying is this  
17 particular version appears to be a draft because  
18 there is no number and there is no number of pages,  
19 which means it's incomplete.

20 MR. BENCOMO:

21 Carl, would you please highlight the  
22 title of the article and also highlight  
23 the first sentence, and blow those up,  
24 please?

25 BY MR. BENCOMO:

26 Q. And the title of the article is The Smoking  
27 and Health Problem: A Critical and Objective  
28 Appraisal. Is that not correct?

29 A. You read that accurately.

30 Q. And what is meant by an objective appraisal?

31 A. I would characterize that as a clearly  
32 unbiased.

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1 Q. And he discusses the smoke-health -- S and  
2 H -- issue and indicates that it is related to the  
3 potential involvement of the members of your  
4 department; is that not correct, sir?

5 MR. GAY:

6 Objection, repetitious.

7 MR. BENCOMO:

8 Your Honor, I'm laying a predicate.

9 THE COURT:

10 Approach the bench, please.

11 (At sidebar:)

12 MR. GAY:

13 Your Honor, Mr. Bencomo has already  
14 asked these same questions with this same  
15 document in his cross-examination.  
16 Apparently he's going to do it again.

17 MR. BENCOMO:

18 I have one question to ask him that I  
19 have never asked him again. How do you  
20 know what I'm going to ask him?

21 THE COURT:

22 Well, I guess maybe the repetition is  
23 it's the second time the document is up  
24 and it's the second time you have been  
25 through the dates and the title of it.  
26 Maybe that's what drew the objection.  
27 Maybe you should just ask him a question,  
28 if you have one?

29 MR. BENCOMO:

30 Well, I know, Judge, but I want to  
31 try to put it in context.

32 MR. LONG:

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1 It's also the second time he said  
2 what does objective mean. If you remember  
3 just the other day he asked what does  
4 objective mean, it's unbiased. This is

5 just a replay.  
6 THE COURT:  
7 Yeah, it's getting repetitious,  
8 Mr. Bencomo. Let's get on to something  
9 that you haven't been over, if there is  
10 anything left.  
11 (In open court:)  
12 MR. BENCOMO:  
13 Carl, would you please go to page  
14 four of the document?  
15 May we publish, Your Honor?  
16 THE COURT:  
17 You may publish.  
18 MR. BENCOMO:  
19 And would you please highlight or  
20 blow up where it reads "The evidence to  
21 date," Section (e), and the first two  
22 sentences? Thank you. And it's kind of  
23 hard to read.  
24 BY MR. BENCOMO:  
25 Q. Dr. Townsend, do you see where it indicates  
26 that the evidence or the amount of evidence that was  
27 accumulated to indict cigarette smoke as a health  
28 hazard was overwhelming, at least as of 1962 when  
29 this document was prepared?  
30 A. I see where it says that, yes.  
31 Q. And in addition, Dr. Rodgman is of the  
32 opinion, is he not, that the evidence challenging

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1 the indictment of cigarette smoke as a health hazard  
2 is scant. Do you see that?  
3 A. I see that, yes.  
4 Q. And scant means what to you?  
5 A. Very little.  
6 Q. I would like to ask you some questions,  
7 Dr. Townsend, about the Premier cigarette that you  
8 discussed yesterday at some length with Mr. Belasic,  
9 just very briefly.  
10 Did you happen to work on the Premier  
11 project, sir?  
12 A. I worked on it in a support role. My  
13 scientists and I did computer modeling of the  
14 product, tried to define the physics of air flow  
15 through the product, looked at different alternative  
16 designs, particularly of the heat source and the  
17 capsule configuration. We did a number of other  
18 pieces of support work as well.  
19 Q. Now, isn't it a fact that the Premier had one  
20 half as much nicotine as your other cigarettes on  
21 the market?  
22 A. Nicotine content in the cigarette or in the  
23 smoke?  
24 Q. Yes, sir.  
25 A. Which? I'm asking.  
26 Q. In the cigarette?  
27 A. I don't remember that.  
28 Q. Okay. Now, at the time, I believe that you  
29 indicated or told this jury that you had test  
30 marketed it, and I believe it was in three different  
31 markets, St. Louis, Tucson and --  
32 A. Phoenix.

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1 Q. -- Phoenix; is that correct, sir?

2 A. Those were the three test markets.  
3 Q. And without giving the jury numbers, Winston,  
4 Salem and Camel were certainly products that your  
5 company made and sold in St. Louis, Phoenix and  
6 Tucson; is that not correct?  
7 A. I would certainly say so.  
8 Q. And isn't it a fact, sir, that the  
9 advertising budget for Winston, Salem and Camel  
10 dwarfed the budget that was being spent in that  
11 market to try to sell the Premier cigarette? Do you  
12 know the answer to that question?  
13 A. I don't know the exact marketing expense of  
14 Premier versus those other brands that you are  
15 talking about. I don't know those numbers.  
16 Q. And sir, one thing that you did not share  
17 with the jury is the taste that Premier had  
18 according to your panels and those who actually  
19 tried the product.  
20 MR. BELASIC:  
21 Objection, misstatement.  
22 THE COURT:  
23 The objection is sustained. Ask the  
24 witness a question, please, Mr. Bencomo.  
25 MR. BENCOMO:  
26 Yes, Your Honor.  
27 BY MR. BENCOMO:  
28 Q. Can you please share with the jury what the  
29 Premier tasted like or what it was described to  
30 taste like?  
31 A. I think I have already testified something to  
32 the taste earlier in my testimony.

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1 The taste of Premier was judged by consumers  
2 to be very weak and extremely different from  
3 tobacco-burning cigarettes.  
4 Some people found it okay and got used to it,  
5 but most people, most smokers of tobacco-burning  
6 cigarettes had a very difficult time adjusting to  
7 that particular taste.  
8 Q. Now, can you share with the jury what the  
9 Premier cigarette smelled like?  
10 A. Well, certainly it had a very different odor,  
11 if you are talking about the odor around the  
12 cigarette?  
13 Q. Yes, sir.  
14 A. It had a very different odor because, if you  
15 remember, there is a glass fiber insulator around  
16 it, and in that is a binder.  
17 So when you first light it, some of that  
18 binder actually burns, and it created an odor which  
19 to some people, well, it was certainly very  
20 different; second, it was somewhat acrid. That went  
21 away, but it was very noticeable to smokers.  
22 Beyond that lighting puff, the odor around  
23 the cigarette was extremely low, and in fact because  
24 there was very little smoke coming off the cigarette  
25 because you are not burning tobacco, so its overall  
26 odor was much, much, much less than tobacco-burning  
27 cigarette.  
28 But initially, that very acrid odor.  
29 Q. How have people described the odor of the  
30 Premier cigarette?  
31 A. What people?



32 Q. Sir, have you ever heard that smokers of your  
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1 Premier cigarette have described the odor to your  
2 test panels, to your surveyors, as smelling like  
3 feces? Have you heard that?

4 A. Consumers saying that?

5 Q. Yes, sir.

6 A. No, I have not.

7 Q. You described the odor as what, acrid?

8 A. I described the odor as acrid. I think if we  
9 lit up one today in this courtroom, I think you  
10 would agree with me.

11 I think you would also agree with me that  
12 after that initial acrid odor, the odor intensity in  
13 the room or around that cigarette is extremely low.  
14 I don't think you would -- I certainly wouldn't and  
15 I don't think most people on this jury would  
16 describe any odor from that cigarette as you did,  
17 though.

18 MR. BENCOMO:

19 Your Honor, it's about three minutes  
20 to twelve.

21 THE COURT:

22 I would like to recess as close to  
23 twelve as we can, considering the context  
24 of your questioning, Mr. Bencomo.

25 MR. BENCOMO:

26 I will use one more document and then  
27 we will take the 12:00 break.

28 Would you go to AZS-000228, and would  
29 you please publish it for the Court, the  
30 witness and opposing counsel?

31 May we publish, Your Honor?

32 THE COURT:

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1 Objection?

2 MR. BELASIC:

3 No objection. I put it in yesterday.

4 THE COURT:

5 You may publish.

6 MR. BENCOMO:

7 Thank you, Your Honor.

8 Carl, just highlight what the  
9 document actually is, please, and blow it  
10 up for the jury.

11 BY MR. BENCOMO:

12 Q. And that's from the Office of Smoking and  
13 Health, Minutes from October 3, 1989, Meeting,  
14 quote, New Tobacco Products, end quote.

15 And that's a document from which Mr. Belasic  
16 asked you some questions about yesterday. Is that  
17 not correct, sir?

18 A. That is correct.

19 MR. BENCOMO:

20 Carl, would you please go to the  
21 fourth page, the third full paragraph?

22 And may we publish, Your Honor?

23 THE COURT:

24 You may publish.

25 MR. BENCOMO:

26 Highlight that and blow that up,  
27 please?

28 MR. BELASIC:

29 Your Honor, could Dr. Townsend have a  
30 hard copy? It's eleven pages long.  
31 THE COURT:  
32 We don't seem to have a copy.

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1 MR. BENCOMO:

2 I have a copy, Your Honor.

3 THE COURT:

4 We will take our luncheon recess at  
5 this point until 1:30, ladies and  
6 gentlemen.

7 (In open court without a jury  
8 present:)

9 THE COURT:

10 Let the record reflect that the jury  
11 has left the courtroom.

12 Anything for the record by plaintiffs  
13 counsel?

14 MR. BENCOMO:

15 No, Your Honor.

16 THE COURT:

17 Anything for the record by defense  
18 counsel?

19 MR. BELASIC:

20 Yes, Your Honor.

21 Over the past few months I have made  
22 a number of objections on nonverbal  
23 communications, and I believe it's  
24 accurate to say that each time you have  
25 instructed the lawyers to disengage in  
26 nonverbal communication with the jury.

27 Now, last night Dr. Townsend  
28 complained to me at dinner that Mr. Bruno,  
29 who sits directly in front of him and sits  
30 directly oftentimes facing the jury, was  
31 rolling his eyes, making faces, et  
32 cetera.

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1 He was disturbed by it because he  
2 thought the jury would see it.

3 I asked Mr. Wittmann if he could  
4 intervene with Mr. Bruno rather than going  
5 on the record.

6 Now I have got to go on the record,  
7 because at 11:35 this morning when  
8 Mr. Bencomo said, "I'll concede you are  
9 bright and articulate," defense counsel  
10 objected to the speech, Mr. Bruno said  
11 loud enough for me to hear over here,  
12 "They don't concede he's bright and  
13 articulate."

14 Now, the guy is three feet from the  
15 jury when he said that. Obviously the  
16 jury heard it.

17 This is after we intervened. We were  
18 trying to do it like gentleman.

19 At 11:43, eight minutes later,  
20 Dr. Townsend was asked whether he could  
21 answer a causation question yes or no. He  
22 said no and began his explanation, and  
23 Mr. Steve Herman began laughing. He  
24 stopped when I glared at him.

25 At the same time, we have

26 Walter Leger at the question about the  
27 "poison in the dose," and Mr. Bencomo  
28 having dramatically repeated it,  
29 Walter Leger swivels toward the jury and  
30 does the dramatic head shaking,  
31 indicating to the jury, yes, this is very  
32 important.

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1 Now, Your Honor, I am going to put it  
2 on the record again because I need to make  
3 a record, but I'm again requesting that  
4 Your Honor do something.

5 I don't know what can be done to  
6 force counsel to act professionally. I  
7 don't care if they are unprofessional if  
8 it doesn't affect the jury, but it can  
9 affect the jury.

10 Now, you have got staff. I don't  
11 know if we have to have people watching  
12 them all the time, but it's getting  
13 ridiculous.

14 MR. RUSS HERMAN:

15 Do not respond.

16 May it please the Court, I want to  
17 address the Court and not the  
18 individuals.

19 I haven't kept time on the number of  
20 instances in which learned counsel for the  
21 defense has thrown up his or her arms,  
22 made grimaces, grunted, et cetera. That  
23 happens during a trial that's lasted two  
24 years.

25 I think we have been under great  
26 control, the plaintiffs' side and the  
27 defense side, considering some of the  
28 witness testimony in this case, the length  
29 of time, et cetera.

30 What I do object to is any counsel  
31 making a statement about anybody on the  
32 plaintiffs' team being unprofessional. I

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1 think it's uncalled for.

2 And most respectfully, we respect the  
3 professionalism of the other side. They  
4 have done the best they can. We have done  
5 the best we can.

6 And I do not think that the witness'  
7 observations of Mr. Bruno are any more  
8 valid than my observations of the witness  
9 who has made certain eye contact, certain  
10 references, placed his hand on the rail in  
11 demonstration.

12 The witness obviously has done thirty  
13 or forty of these cases. He put cigarette  
14 particles on the rail, which in any other  
15 case would be called getting in the jury  
16 box.

17 Learned counsel for the defense  
18 himself on examining witnesses at times  
19 has either pointed in cross-examination  
20 at witnesses or put his hands on the  
21 rail.

22 Those things happen. I'm not going

23 to say it's unprofessional. There is no  
24 indication that it's affected this jury  
25 one bit.

26 And I would suggest that everybody  
27 just calm down, and that the trial team  
28 captain for the defense meet with me right  
29 now to see if this sort of pejorative  
30 statement on the record can be precluded  
31 in the future.

32 THE COURT:

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1 Everybody in this courtroom is aware  
2 of the ethics. Body language is not  
3 allowable. Gestures and facial gestures  
4 and other antics such as laughter and  
5 smirking are not allowable.

6 And if I see it done, I am going to  
7 cite the lawyer for contempt, and I'm  
8 going to impose some penalties.

9 And it's a terrible word, but  
10 mistrial is not out of the question if it  
11 continues.

12 And I recognize what a blow that  
13 would be to both sides, but I'm here to  
14 give a fair trial, and if it continues and  
15 it's blatant and I think it gets to that  
16 point, I won't hesitate.

17 Just be advised. That applies to  
18 both sides.

19 And I don't have the ability to  
20 police it, but I have the ability to  
21 appoint somebody to police it who is  
22 neutral, and I just may do that.

23 So be advised that I won't tolerate  
24 it.

25 We will recess until 1:30.

26 MR. RUSS HERMAN:

27 Your Honor, one more thing along  
28 those lines?

29 I assume it applies to all the  
30 lawyers and paralegals in this courtroom?

31 THE COURT:

32 It applies to anybody who practices

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1 law in this state or assists anybody who  
2 practices law in this trial.

3 (Whereupon, the hearing recesses at  
4 12:05 p.m.)  
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1 REPORTER'S CERTIFICATE

2

3 I, NICHOLAS A. MARRONE, CCR, Registered  
4 Merit Reporter, do hereby certify that the foregoing  
5 proceedings were reported by me in shorthand and  
6 transcribed under my personal direction and  
7 supervision, and is a true and correct transcript,  
8 to the best of my ability and understanding.

9 That I am not of counsel, not related to  
10 counsel or the parties hereto, and not in any way  
11 interested in the outcome of this matter.

12

13

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NICHOLAS A. MARRONE (CCR 21011)  
CERTIFIED COURT REPORTER  
REGISTERED MERIT REPORTER

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